CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 254

S. R. A., INC., PETITIONER,

vs.

STATE OF MINNESOTA

No. 255

S. R. A., INC., PETITIONER,

vs.

STATE OF MINNESOTA

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR CERTIORARI FILED JULY 24, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

SUPREME COURT OF THE UNITED STATES

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No.

S. R. A., INC., PETITIONER,

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STATE OF MINNESOTA

ON PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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[fol. 1]

IN DISTRICT COURT OF RAMSEY COUNTY, SECOND JUDICIAL DISTRICT, STATE OF MINNESOTA

In the Matter of the Petition of S. R. A. INCORPORATED, a corporation, to have determined its claim that the property herein described is exempt from taxation and that the same was partially, unfairly, and unequally assessed, and assessed at a value greater than its actual value for the year 1940

PETITION

Now comes petitioner and respectfully alleges and shows:

I

That petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

[fol. 2] II

That the United States of America was, on the 1st day of May, 1940, and for many years prior thereto, and now is, the owner of a certain tract or parcel of land situate, lying, and being in the City of Saint Paul, County of Ramsey, and State of Minnesota, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

[fol. 3] That said real estate is described on the Tax Rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, and is assessed to S. R. A. Incorporated subject to fee title remaining in the United States of America.

III

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A", and made a part hereof by reference.

IV

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B", and made a part hereof by reference.

[fol. 4]

V

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C", and made a part hereof by reference.

VI

That petitioner has paid only the sums required to be paid to the Treasurer of the United States under the terms of said contract of purchase and sale, and that petitioner is not now and was not on May 1, 1940, entitled to receive from the United States of America, through the Director of Procurement, a quit claim deed conveying title to the property above described.

VII

That the title to all of the premises above described was at all times herein mentioned and now is in the United States of America, and that the same premises are exempt from taxation by the State of Minnesota or by the County of Ramsey.

[fol. 5]

VIII

That said real estate so hereinbefore described was valued by the assessing officers of Ramsey County as of May 1, 1940, in the sum of Two Hundred Seventy-seven Thousand Six Hundred Dollars ($277,600.00), its classified value being put upon the assessment lists at One Hundred Eleven Thousand and Forty Dollars ($111,040.00), to which was applied the tax rate of ninety-nine and ninety-eight one-hundredths (99.98) mills, resulting in a tax in the sum of Eleven Thousand One Hundred One and 78/100 Dollars ($11,101.78).

IX

That said real estate has been partially, unfairly, and unequally assessed, and has been assessed at a value greater than its real or actual value.

Wherefore, Petitioner prays for an order of the within Court:

1. Determining that the title to the premises herein described is in the United States of America, and that the same are exempt from taxation by the State of Minnesota or the County of Ramsey;

2. Reducing the full and true value of said premises to the actual value thereof;

3. For such other and further relief as may to the Court seem just and proper; and

[fols. 6-7] 4. For its costs and disbursements herein.

Dated: This 23rd day of April, 1941.

S. R. A. Incorporated, by Robert E. Albrecht, President, Petitioner.

Duly sworn to by Robert E. Albrecht. Jurat omitted in printing.

[fol. 8] EXHIBIT "A" TO PETITION

(1)

PROPOSAL TO PURCHASE SURPLUS REAL PROPERTY OF THE UNITED STATES

(Act of August 27, 1935, 49 Stat. 885, U. S. C. title 40, Sec. 304a)

(See Page 5—"Instructions to Bidders")

St. Paul, Minnesota, Apr. 17, 1939.
City, State and Date

The Director of Procurement, Procurement Division, Treasury Department, Washington, D. C.

SIR:

In accordance with, and subject to the terms of your invitation, the terms of payment hereinafter set forth, and the following conditions:

(1) The Government reserves the right to reject any bid;

(2) No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of [fol. 9] the contract of which these conditions form a part or to any benefit to arise therefrom;

(3) Any title search desired shall be undertaken by the purchaser at purchaser's expense, and the Government shall not be required to furnish any abstracts or other evidence of title, but may, at its option, permit inspection and copying of its title papers by the purchaser at purchaser's expense at a place selected by the Government;

(4) Upon acceptance of this proposal the Government shall apply the purchaser's deposit toward payment of the purchase price;

(5) Upon taking possession of the property, the purchaser shall bear the risk of any loss or damage to the same from any cause whatsoever;

(6) Upon failure of the purchaser to comply with any of the terms or conditions hereof, the Director of Procurement may, by notice in writing, terminate the contract,

and any installments of the purchase price already paid shall be retained by the Government, which may thereupon resume immediate possession of the premises and, at its option, again sell the same and recover of the defaulting purchaser any deficiency in price resulting from such resale, together with all expenses incurred by reason of the default;

(7) When the purchaser has paid the total purchase price in the manner hereinafter set forth and has complied with [fol. 10] all the other terms and conditions hereof, the Director of Procurement, with the approval of the Secretary of the Treasury, shall execute and deliver a quitclaim deed conveying to the purchaser or the purchaser's nominee a marketable title to the property free and clear of all encumbrances, objections, or defects, except such as may be noted hereinafter or may have accrued against the purchaser's interest in the property subsequent to the acceptance of this proposal; *Provided, nevertheless,* that unless the purchaser shall submit proof of any encumbrance, objection, or defect before acceptance of a deed and in any event within sixty (60) days after acceptance of this proposal, all encumbrances, objections, and defects affecting the title to the property shall be conclusively presumed to have been waived and the purchaser and persons claiming under the purchaser shall thenceforth be forever barred from asserting the existence of the same, but if proof submitted within the time limited above establishes the existence of any encumbrance, objection, or defect, other than those excepted above, affecting the title agreed to be conveyed by the foregoing provisions of this paragraph, the purchaser may rescind the contract and recover all moneys already paid on account of the purchase price; *Provided, however,* that neither the purchaser nor persons claiming under the purchaser shall be entitled under any [fol. 11] circumstances to recover from the Government any damages, interest, or costs, on account of any encumbrance, objection, or defect affecting the title to the property; *Provided, further,* that, if, and only if, the Government is satisfied that no loss to it or impairment of its security will result, the purchaser or the purchaser's nominee shall be entitled, in advance of final payment, to the conveyance, otherwise subject to the foregoing provisions of this paragraph, of portions of the property upon advance payment of such portion or portions of the total

purchase price as the Government shall determine, with accrued interest at the contract rate, or at a rate determined by the Government if none be specified, and thereupon the unpaid balance of the total purchase price, as reduced by said partial payment of principal, shall remain payable as hereinafter set forth; and subject, also to the following provisions of the act of August 27, 1935, 49 Stat. 885, U. S. C. title 40, sec. 304a:

> "• • • That notwithstanding any other provisions of law, whenever any real property located outside of the District of Columbia, exclusive of military or naval reservations, heretofore or hereafter acquired by any Federal agency, by judicial process or otherwise in the collection of debts, purchase, donation, condemnation, [fol. 12] devise, forfeiture, lease, or in any other manner, is, in whole or in part, declared to be in excess of its needs by the Federal agency having control thereof, or by the President on recommendation of the Secretary of the Treasury, the Director of Procurement, with the approval of the Secretary of the Treasury, is authorized • • • to sell the same at public sale to the highest responsible bidder upon such terms and after such public advertisement as he may deem in the public interest.";

the undersigned bidder offers to purchase from the United States of America, herein referred to as the Government, in response to your invitation for bids to be opened at 10:30 A. M., April 21, 1939, the property known as the St. Paul, Minnesota, old Custom House site and building which has been declared to be in excess of the needs of the Treasury Department and is more particularly described as follows:

All that tract or parcel of land situated in the City of Saint Paul, County of Ramsey, State of Minnesota, and described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising [fol. 13] together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred

and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

provided this proposal is accepted in writing by the Government within thirty-five (35) days after the date of opening of bids specified in the invitation, for the sum of One Hundred Fifteen Thousand One Hundred One and No/100 Dollars ($115,101.00), payable (by certified check or money order drawn to the order of "Treasurer of the United States") in accordance with the option marked [X] below:

Option (A): All cash on receipt of a quitclaim deed, which shall be delivered, subject to the terms of para- [fol. 14] graph No. 7, above, within sixty (60) days [ ] from the date of the Government's letter accepting this proposal, unless such time shall be extended by the Government,

or, Option (B): Five per centum (5%) of the purchase price to accompany the proposal as evidence of good faith and to be applied to the purchase price in the event this proposal is accepted; five per centum (5%) of the purchase price together with interest thereon at the rate of four per centum (4%) payable nine (9) months from the date of the Government's letter accepting this proposal; balance to be paid as follows: The sum of Nine thousand five hundred dollars ($9,500.00) payable, respectively, [X] one, two, three, four, five, six, seven, eight and nine years from the date of acceptance of this proposal, each installment of Nine thousand five hundred dollars ($9,500.00) to be applied first to interest due on the unpaid balance of the purchase price at the rate of four per centum (4%) per annum, the remainder of such installments to be applied as principal to the unpaid balance of the purchase price, the then remaining balance of the purchase price to be due and payable at the end of the tenth (10th) year together with interest thereon at the rate of four

per centum (4%) provided, that purchaser, if not in default with respect to payment of any installment or interest may [fol. 15] pay in full any or all unpaid installments of principal with accrued interest at said rate at any time within ten (10) years from date of acceptance of proposal;

Leases may be executed by installment purchasers without the Government's approval but shall be subordinate to the Government's interest in the property.

Possession will be given upon payment of the purchase price or upon the first partial payment thereof.

Enclosed please find the required 5% deposit: (Certified check) (money order) in the amount of Five Thousand Seven Hundred Fifty-five and 05/100 Dollars ($5,755.05).

S. R. A. Incorporated (Bidder), by R. E. Albrecht, President. Individual or Corporate Seal (Corporate Seal.)

[fol. 16] Instructions to Bidders

1. Proposals must be in duplicate On This Form, enclosed in a sealed envelope marked "Proposal For Purchase of (insert identifying description")) and mailed or delivered by hand to the Section of Space Control, Procurement Division, Treasury Department, Washington, D. C. Telegraphic bids will not be considered but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening. The officer whose duty it is to open bids will decide when the specified time has arrived, and no bid received thereafter will be considered, except that when a bid arrives by mail after the time fixed for opening, but before award is made, and it is shown to the satisfaction of the officer authorized to make the award that the non-arrival on time was due solely to delay in the mails for which the bidder was not responsible, such bid will be received and considered. No responsibility will attach to an officer for the premature opening of a bid not properly addressed and identified.

2. Each Proposal Must Be Accompanied by a Certified Check or Money Order Drawn to the Order of "Treasurer of the United States" for 5% of the Amount of the Bid, [fol. 17] the Proceeds of Which Shall Become the Property

of the United States if the Bid Is Withdrawn Within the Period Hereinbefore Specified for Acceptance or if the Bidder Defaults After Acceptance. The proceeds of the checks of unsuccessful bidders will be returned to them as promptly as possible. The proceeds of the successful bidder's check will be applied on the purchase price.

3. If the bidder is an individual, an adhesive seal shall be affixed opposite the signature. If the bidder is a corporation the corporate seal shall be affixed. If the corporation has no corporate seal, the fact shall be stated and an adhesive seal shall be affixed.

4. A proposal executed by an attorney or agent on behalf of the bidder shall be accompanied by two authenticated copies of his power of attorney, or other evidence of his authority to act on behalf of the bidder. If the bidder is a corporation, the Certificate below must be executed. If the proposal is signed by the secretary of the corporation, then the Certificate must be executed by some other officer of the corporation under the corporate seal. In lieu of the Certificate below, there may be attached to the proposal, copies of so much of the records of the corporation as will [fol. 18] show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

Certificate of Corporate Bidder

I, Ryland J. Rothschild certify that I am the secretary of the corporation named as bidder herein; that Robert E. Albrecht who signed this proposal on behalf of the bidder, was then President of said corporation; that said proposal was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Ryland J. Rothschild, Secretary. (Affix Corporate Seal.) (Seal.)

Copy.

[fol. 19] EXHIBIT "B" TO PETITION

WESTERN UNION

Money Order Message

Real Estate

1894

Money Sent by Telegraph and Cable to all the World

B. White
President

J. C. Willever
First Vice President

Newcomb Carlton
Chairman of the Board

No. WAB24 524 12th St. SW April 21, 1939

To Treasurer of United States, care Director Procurement Department.:

The Money Order paid you herewith is from S. R. A., Inc. by R. E. Albrecht at St. Paul, Minn. and included the following Message: INCREASE OUR BID ON OLD CUSTOMS BLDG. ST. [fol. 20] PAUL BY SIX THOUSAND DOLLARS STOP WIRING HEREWITH ADDITIONAL FIVE PERCENT. $300.00. OFFICE REG. $40.50.

Received: Division of Procurement, Public Works Branch. April 21, 1939.

Noted —— ——.
Ans'd —— ——.
10:40 A. M.

Received April 21//12AM '39, Space Control

Procurement Division, The Western Union Telegraph Company.

Copy.

[fol. 21] EXHIBIT "C" TO PETITION

St. Paul, Minn.; CU.H. (OLD)
T5-PB-601

TREASURY DEPARTMENT

Procurement Division
Washington

Public Buildings Branch
In Replying, Quote the Above
Subject, Building, and these
letters PB-SC-RE

S. R. A. Incorporated,
Attention: R. E. Albrecht, President,
237 Woodlawn Avenue,
St. Paul, Minnesota.

May 20, 1939

Sirs:

Pursuant to authority contained in the Act of August 27, 1935, 49 Stat. 885 (U. S. C. title 40, sec. 304a), your proposal dated April 17, 1939, as amended by your telegram dated April 21, 1939, in the amount of One Hundred Twenty-one Thousand One Hundred and One Dollars ($121,101.00) the higher bid of two received after public advertisement, and the only bid conforming to the terms thereof, to pur-[fol. 22] chase the old Custom House site and building, at St. Paul, Minnesota, is hereby accepted, in accordance with all the terms set forth in said proposal and telegram, copies of which are attached hereto and made a part hereof.

Very truly yours, W. E. Reynolds, Acting Director of Procurement.

Approved: May 26, 1939. Stephen B. Gibbons, Acting Secretary of the Treasury.

Copy.

IN DISTRICT COURT OF RAMSEY COUNTY

STIPULATION OF FACTS

It is Hereby Stipulated by and between the parties to the above entitled cause, by and through their respective counsel, that the following facts may be and the same are agreed to be admitted in the trial of said cause:

1. That S. R. A., Incorporated is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and is the petitioner in the above entitled cause.

[fol. 23] 2. That the premises which are the subject of the above entitled petition are described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

and are situate in the City of Saint Paul, County of Ramsey, and State of Minnesota, at the intersection of Fifth and Wabasha Streets in said City; that the real estate is described on the tax rolls of Ramsey County, Minnesota, as [fol. 24] the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota.

3. That for tax purposes the premises so described are assessed upon the records of Ramsey County, Minnesota, to S. R. A. Incorporated "subject to fee title remaining in the United States of America."

4. That the premises above described were acquired by the United States of America by deed from various parties in the year 1867, and that the legal title to the said premises is now and ever since 1867 has been in the United States of America, save as the same may have been affected by the transactions with S. R. A. Incorporated as hereinafter set forth:

That in or about the year 1870, a building was erected upon the above described premises by the United States of America, and for many years thereafter, the premises were occupied by the United States of America as a post office and as an office for various departments of the United States, including the Department of Internal Revenue; that for some years prior to the 1st day of April, 1939, neither the building on the premises nor any portion of the premises had been occupied by the United States of America or by any other person whatsoever.

[fol. 25] 5. That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A" and made a part hereof by reference.

6. That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B" and made a part hereof by reference.

7. That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C" and made a part hereof by reference.

8. That it is claimed by petitioner that prior to the time when its proposal, represented by Exhibit "A" hereto attached, was submitted to the United States of America, S. R. A. Incorporated had consulted counsel with respect to the

question of whether or not the property would be subject [fol. 26] to taxation until the purchase price therefor was fully paid to the United States of America, and was advised that in the opinion of counsel, the property would not be subject to taxation until the purchase price was fully paid, and that this advice was a factor in determining the amount which S. R. A. Incorporated bid for the premises.

9. That subsequent to the 26th day of May, 1939, the building which had been erected upon the premises by the United States of America was razed, demolished, and destroyed by S. R. A. Incorporated; that subsequent thereto and prior to the 1st day of May, 1940, a building had been erected upon said premises by S. R. A. Incorporated; that on the 1st day of May, 1940, stores in said building had been leased by S. R. A. Incorporated to various tenants, and the balance of the premises not covered by the building had been leased for automobile parking purposes, and that all of said premises on May 1, 1940, was used for purposes of a commercial nature, and no part or portion thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

10. That S. R. A. Incorporated has paid to the United States of America the payment accompanying the proposal of April 17, 1939, of $5,755.05; the payment accompanying [fol. 27] the supplemental proposal of April 21, 1939, of $300.00; the payment due February 26, 1940, of $6,055.05, with interest thereon at 4% per annum; and on May 1, 1940, no other payments had been made to the United States of America.

11. For the purposes of determining the issue here submitted and without prejudice to any other issue, it is stipulated that the property in question was assessed and taxed as all other real property in the County and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; that the tax records of said Ramsey County, Minnesota, of taxes levied and assessed for the year 1940 were duly certified on January 6, 1941, by Eugent A. Monick, County Auditor of said Ramsey County, including the property in question, to be a correct list of the taxes levied

upon the real property in said County of Ramsey for the year 1940; and that on said last mentioned date Elsa M. Obst duly certified that she received the said tax records from the said County Auditor; and that said tax records contained the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of "S. R. A. Incorporated (subject to the fee title remaining in [fol. 28] the United States of America)"; description of property: the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8). Saint Paul, Minnesota; assessed valuation $111,040; general tax $11,101.78; total general tax $11,101.78; street sprinkling $27.97, total tax $11,129.75; and that said tax records have been in the possession of the said County Treasurer for the collection of said taxes ever since said last mentioned date.

12. That the assessor of said Ramsey County determined the true and full value of the property in question as of May 1, 1940, to be the sum of $277,600.00; and that the tax rate upon real property in the County of Ramsey with the exception of properties devoted to homesteads, for the year 1940, was 99.98 mills upon the assessed valuation, which was the rate applied to the property in question.

13. That only the question of immunity from taxation is being submitted to the Court for determination at this time; and that all other questions in this case, since they have no bearing upon the issue of immunity from taxation, have been reserved by order of this Court for determination at a later date in the event that the State prevails upon the issue here submitted.

[fol. 29] Dated: This 28th day of November 1941.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for County of Ramsey and State of Minnesota. Otis, Faricy & Burger, Attorneys for Petitioner.

[fols. 30-39] Exhibit "A" omitted. Printed side page 8, ante.

[fol. 40] Exhibit "B" omitted. Printed side page 19, ante.

[fols. 41-42] Exhibit "C" omitted. Printed side page 21, ante.

[fol. 43] In District Court of Ramsey County

Findings of Fact, Conclusions of Law and Order for Judgment

The above entitled matter having come duly on for trial, was tried before the undersigned without a jury on November 28, 1941, Otis, Faricy & Burger appearing as attorneys for the petitioner, S. R. A. Incorporated, and James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney, appearing as attorneys for the State of Minnesota,

And it appearing that by order entered by this Court dated the 21st day of November, 1941, the issue of whether or not the title to the premises described in the petition herein is in the United States or whether the same is exempt from taxation by the State of Minnesota or by the County of Ramsey shall be first tried and submitted to the Court and determined by it without prejudice to the right of the petitioner to have tried thereafter the issue as to whether or not the said real estate described in the petition has been partially, unfairly, and unequally assessed and assessed at a value greater than its real or actual value by the assessing officers of Ramsey County, as of May 1, 1940, in the event the final judgment of the Court upon the trial of the first issue shall be unfavorable to the petitioner.

[fol. 44] And the Court having heard the evidence and the arguments of counsel upon the issue of whether or not the title to the premises described in the petition herein is in the United States of America or whether the same is exempt from taxation by the State of Minnesota or the County of Ramsey, upon the evidence and the pleadings, the Court finds,

As Facts

1. That the petitioner in the above entitled cause, S. R. A. Incorporated, is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

2. That the premises which are the subject of the petition are described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by [fol. 45] deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

and are situate in the City of Saint Paul, County of Ramsey and State of Minnesota, at the intersection of Fifth and Wabasha Streets in said City.

3. That the real estate is described on the tax rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota.

4. That for tax purposes, the premises so described are assessed upon the records of Ramsey County, Minnesota, to S. R. A. Incorporated "subject to fee title remaining in the United States of America."

5. That the premises above described were acquired by the United States of America by deed from various parties in the year 1867, and that the legal title to the said premises [fol. 46] was on May 1, 1940, and ever since 1867 had been in the United States of America.

6. That in or about the year 1870, a building was erected upon the above described premises by the United States of America, and for many years thereafter, the premises were

occupied by the United States of America as a Post Office and as an office for various departments of the United States, including the Department of Internal Revenue; that for some years prior to the 26th day of May, 1939, neither the building on the premises nor any portion of the premises had been occupied by the United States of America or by any other person whatsoever.

7. That on or about the 26th day of May, 1939, a contract for deed was entered into between S. R. A. Incorporated and the United States of America under the terms of which contract for deed S. R. A. Incorporated agreed to pay to the United States of America for the purchase price of said premises the sum of One Hundred Twenty-one Thousand One Hundred One Dollars ($121,101.00), 5% thereof to be paid May 26, 1939, 5% within nine months from May 26, 1939, with interest thereon at the rate of 4% per annum, and the balance at the rate of Ninety-five hundred Dollars ($9,500.00) payable one, two, three, four, five, six, seven, eight, and nine years from May 26, 1939, each installment [fol. 47] of Ninety-five Hundred Dollars ($9500.00) to be applied first to interest due on the unpaid balance of the purchase price at the rate of 4% per annum, the remainder of said installments to be applied as principal to the unpaid balance of the purchase price, the then remaining balance of the purchase price to be due and payable on May 26, 1949, together with interest thereon at the rate of 4%, with the right on the part of S. R. A. Incorporated, if not in default with respect to the payment of any installment or interest, to pay in full any or all unpaid installments of principal with accrued interest at 4% at any time within ten years from May 26, 1939, and the United States of America agreed, when S. R. A. Incorporated has paid the total purchase price in the manner so provided, and has complied with all terms and conditions of such contract for deed, to execute and deliver to S. R. A. Incorporated a quit claim deed conveying to it or its nominee a marketable title to the premises, free and clear of all encumbrances, objections, or defects, except such as may have accrued against the purchaser's interest in the property subsequent to May 26, 1939.

8. That subsequent to the 26th day of May, 1939, the building which had been erected on the premises by the United States of America was razed, demolished, and de-

stroyed by S. R. A. Incorporated; that subsequent thereto [fol. 48] and prior to the 1st day of May, 1940, a building had been erected upon said premises by S. R. A. Incorporated; that on the 1st day of May, 1940, stores in said building had been leased by S. R. A. Incorporated to various tenants, and the balance of the premises not covered by the building had been leased for automobile parking purposes, and that all of said premises on May 1, 1940, was used for purposes of a commercial nature, and no part or portion thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

9. That S. R. A. Incorporated has paid to the United States of America the payment of 5% of the purchase price amounting to Six Thousand Fifty-five and 05/100 Dollars ($6055.05) and due on May 26, 1939, the payment due February 26, 1940, of Six Thousand Fifty-five and 05/100 Dollars ($6055.05), with interest thereon at 4% per annum; and on May 1, 1940, no other payments had been made to the United States of America.

10. That the premises hereinbefore described were assessed and taxed as all other real property in the County and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the Statutes of the State of Minnesota; that the tax [fol. 49] records of said Ramsey County, Minnesota, of taxes levied and assessed for the year 1940 were duly certified on January 6, 1941, by Eugene A. Monick, County Auditor of said Ramsey County, including the property in question, to be a correct list of the taxes levied upon the real property in said County of Ramsey for the year 1940; and that on said last mentioned date Elsa M. Obst, County Treasurer, duly certified that she received the said tax records from the said County Auditor; and that said tax records contained the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of "S. R. A. Incorporated (subject to the fee title remaining in the United States of America)"; description of property: the East ten (10) feet of the South one Hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota;

assessed valuation One Hundred Eleven Thousand Forty Dollars ($111,040.00); general tax Eleven Thousand One Hundred One and 78/100 Dollars ($11,101.78); street sprinkling Twenty-seven and 97/100 Dollars ($27.97), total tax Eleven Thousand One Hundred Twenty-nine and 75/100 Dollars ($11,129.75); and that said tax-records have been in the possession of the said County Treasurer for the collection of said taxes ever since said last mentioned date.

[fol. 50] 11. That the assessor of said Ramsey County determined the true and full value of the property in question as of May 1, 1940, to be the sum of Two Hundred seventy-seven Thousand Six Hundred Dollars ($277,600.00); and that the tax rate upon real property in the County of Ramsey with the exception of properties devoted to homesteads, for the year 1940, was 99.98 mills upon the assessed valuation, which was the rate applied to the property in question.

12. That no part or portion of the taxes so assessed for the year 1940 as hereinbefore set forth has been paid.

13. That there is no authority, statutory or otherwise, which will permit the assessment of a tax against said premises subject to fee title remaining in the United States of America.

14. That only the question of immunity from taxation is being submitted to the Court for determination at this time; and that all other questions in this case, since they have no bearing upon the issue of immunity from taxation, have been reserved by order of this Court for determination at a later date in the event that the State prevails upon the issue here submitted.

[fol. 51] AS CONCLUSIONS OF LAW

1. That the title to the premises situate, lying and being in the County of Ramsey and State of Minnesota, described as follows, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint

Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68,

was on May 1, 1940, in the United States of America, and that the same were exempt from taxation by the State of Minnesota or the County of Ramsey.

[fol. 52] 2. That the tax assessed against the premises above described subject to fee title remaining in the United States of America for the year 1940 and the whole of said tax is illegal and void and of no force and effect.

Let judgment be entered accordingly.

Dated: This 23rd day of January, 1942.

John W. Boerner, District Judge.

Stay of 40 days allowed. Boerner, J.

IN DISTRICT COURT OF RAMSEY COUNTY

NOTICE OF PROPOSAL FOR SETTLED CASE

To the above named Petitioner, S. R. A. Incorparted, a corporation and Messrs. Otis, Faricy and Burger, Attorneys for the Petitioner:

You Will Please Take Notice that the State of Minnesota, and County of Ramsey proposes the within Stipulation of Facts, Petition, Findings of Fact and Conclusions of Law and Order for Judgment, all pertaining to the above entitled cause consisting of 29 pages of typewritten matter, as and for the settled case herein.

[fol. 53] You Will Also Please Take Notice that the State of Minnesota, and County of Ramsey will apply to the Court

in Chambers for an Order settling and allowing said proposed case as and for the settled case herein.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for the State of Minnesota and County of Ramsey.

In District Court of Ramsey County

Certificate

I hereby certify that I have examined the foregoing settled case, consisting of 29 pages of typewritten matter, and that I find the same to contain the Petition herein, the Stipulation of Facts and the Findings of Fact and Conclusions of Law, which constitute all of the evidence, all of the papers filed herein and all of the proceedings had herein and that the same is hereby settled and allowed as and for the settled case in the above entitled action.

[fol. 54] Dated at St. Paul, Minnesota, this 3rd day of February, 1942.

John W. Boerner, District Judge.

In District Court of Ramsey County

Amended Motion for Amendment of Findings of Fact, Conclusions of Law and Order for Judgment and in the Event Said Motion Is Denied, for a New Trial.

To the above named Petitioner, S. R. A. Incorporated, a corporation and Messrs. Otis, Faricy & Burger, Attorneys for the Petitioner:

You Will Please Take Notice that the State of Minnesota, and County of Ramsey on the settled case and on the files, records and proceedings herein, will move the above named Court, at a special term thereof, to be held at the Court House in the City of St. Paul, County of Ramsey, State of Minnesota, on the 28th day of March, 1942, at ten o'clock in the forenoon of said day, or as soon thereafter as Counsel can be heard, for an Order amending the Findings of Fact,

Conclusions of Law and Order for Judgment heretofore [fol. 55] made and filed herein in the following particulars:

I

That paragraph 13 of the said Findings of Fact be stricken out.

CONCLUSIONS OF LAW:

I

That all of said Conclusions of Law and Order for Judgment be stricken out and the following Conclusions of Law and Order for Judgment substituted in lieu thereof:

I

That on May 1, 1940, the United States of America was vested with the legal title as security for payment of the purchase price of the said premises situate, lying and being in the County of Ramsey, State of Minnesota, described as follows, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of [fol. 56] the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68,

and on said last-mentioned date the equitable title to said premises was vested in the petitioner, S. R. A. Incorporated, and was subject to taxation by the State of Minnesota and the County of Ramsey.

II

That the tax assessed against the premises above described subject to the legal title remaining in the United

States of America, for the year 1940 and the whole of said tax is legal and valid.

[fol. 57] III

That the petitioner is without authority to assert the immunity of the United States from taxation of its lands by the State of Minnesota as a defense.

ALTERNATIVE MOTION

In the event the foregoing Motion is denied, the State of Minnesota and County of Ramsey will move the Court for an order vacating and setting aside the Findings of Fact, Conclusions of Law and Order for Judgment thereon heretofore made and filed herein, and granting a new trial herein. Said Motion will be based upon the following Assignments of Error:

1. That the decision of the Court is not sustained by the evidence and is contrary to law.

2. That the Court erred in making Findings of Fact number "13. That there is no authority, statutory or otherwise, which will permit the assessment of a tax against said premises subject to fee title remaining in the United States of America".

3. That the Court erred in finding as Conclusions of Law.

"1. That the title to the premises situate, lying and being in the County of Ramsey and State of Minnesota, described as follows, to-wit:

[fol. 58] The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867,

recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68,

was on May 1, 1940, in the United States of America, and that the same was exempt from taxation by the State of Minnesota or the County of Ramsey.

2. That the tax assessed against the premises above described subject to fee title remaining in the United States of America for the year 1940 and the whole of said tax is illegal and void and of no force and effect."

[fol. 59] 4. That the Court erred in denying the amended motion made on behalf of the State of Minnesota and the County of Ramsey for an order amending the Findings of Fact, Conclusions of Law and Order for Judgment.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for the State of Minnesota and County of Ramsey.

In District Court of Ramsey County

Notice

To James F. Lynch and Andrew R. Bratter, Attorneys for the State of Minnesota:

You Will Please Take Notice that an order, a copy of which is hereto attached, was entered by the within Court on the 30th day of March, 1942.

Otis, Farley & Burger, Attorneys for Petitioner, W-1862 First Natl. Bk. Bldg., Saint Paul, Minnesota.

[fol. 60] In District Court of Ramsey County

Order Denying Motion

This matter came before the Court at Special Term on March 28, 1942, upon the amended motion of the State of Minnesota and County of Ramsey for an order amending the findings of fact, conclusions of law, and order for judgment heretofore made and filed herein, in the particulars set forth in the motion papers filed herein, and in the event

said motion is denied, for an order vacating and setting aside the findings of fact, conclusions of law, and order for judgment heretofore made and filed herein, and granting a new trial herein upon the grounds set forth in the motion papers filed herein.

James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney, appeared for the State of Minnesota and County of Ramsey and in support of said motions, and Otis, Faricy & Burger appeared as attorneys for the Petitioner, S. R. A. Incorporated, and in opposition thereto.

Upon the files and records, after hearing counsel, and upon due consideration, it is

Ordered that the said motions and each of them be, and the same are hereby denied.

Dated: March 30, 1942.

John W. Boerner, District Judge.

Stay of 40 days allowed.

[fol. 61] In District Court of Ramsey County

Notice of Appeal to Supreme Court

To the above named Petitioner S. R. A. Incorporated, a corporation, and to Messrs. Otis, Faricy & Burger, its attorneys, and to J. J. Fitzgerald, Clerk of the Above Named Court:

You Will Please Take Notice that the State of Minnesota and the County of Ramsey appeal to the Supreme Court of the State of Minnesota from that certain order of the above named court dated and filed herein on the 30th day of March, 1942, denying the motion of the State of Minnesota and the County of Ramsey for an order amending the findings of fact, conclusions of law and order for judgment theretofore made and filed herein and in the alternative denying the motion of the State of Minnesota for a new trial.

Dated this 4th day of March, 1942.

James F. Lynch, County Attorney and Andrew R. Bratter, Assistant County Attorney.

[fol. 62] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

In re Petition of S. R. A., INC. for Determination of its Claim that Certain Property Is Tax Exempt for 1940

33270

S. R. A., INC., Respondent,

vs.

STATE OF MINNESOTA and COUNTY OF RAMSEY, Appellants

SYLLABUS

1. The power of taxation is inherent in sovereignty; as such, constitutional provisions are not a grant of, but a limitation upon, this power, and, except as thus limited, it is exhaustive and embraces every conceivable subject of taxation.

2. Taxes are pecuniary charges imposed by the legislative power to raise money for public purposes—a burden imposed to supply the very lifeblood of the state.

3. It is for the legislature to devise the mode, form and extent of taxation to be imposed.

4. Real estate taxes, which are assessed and enforced against the land itself, are not charges against the person owning the property or his estate, and proceedings to enforce them are strictly *in rem*, not *in personam*.

5. Real estate for taxation purposes, as defined by Minn. St. 1941, § 272.03, subd. 2 (Mason St. 1927, § 1977), includes the land itself and all structures and improvements upon it, as well as all rights and privileges belonging or appertaining to the land.

6. An executory contract for the sale of land under which the vendee is entitled to or does take possession [fol. 63] thereof is deemed, for the purposes of the mortgage registration act, a mortgage of the land for the unpaid balance of the purchase price. Minn. St. 1941, §§ 287.01, subds. 2, 3, 287.02, 287.04 (Mason St. 1927, § 2322).

7. A mortgage upon real estate, while in form a conveyance of an estate or interest in land, is in its purpose and effect a mere lien or security—a chattel, or thing in action.

8. Under a contract for the sale of land where the vendee is entitled to possession or where he takes such possession, the relationship between the vendee and vendor is similar to that created by mortgage or conditional sale, the beneficial interest being in the vendee and the security interest in the vendor.

9. Where the vendee under such a contract has taken possession of the land, his interest for the purpose of taxation is the same as that of any other owner.

10. As such owner, the vendee may not use his vendor's immunity to taxation as a shield to avoid meeting his tax obligations as an owner, since it is his land that is being taxed, not that of his vendor.

11. A finding not sustained by the record and which is in substance a mere conclusion of law may be stricken as irrelevant to the issues.

Order reversed.

OPINION—Filed December 24, 1942

JULIUS J. OLSON, Justice:

These proceedings were brought by respondent pursuant to Minn. St. 1941, § 278.01 (Mason St. 1940 Supp. § 2126-1) to secure an order of the court "determining that the title" to certain real estate in St. Paul "is in the United States," and for that reason "exempt from taxation by the state"; [fol. 64] also (we assume as an alternative) to reduce "the full and true value of said premises to the actual value thereof." (Hereafter we shall refer to respondent as S. R. A. and to appellant as the state.)

Counsel stipulated as to the facts. These were adopted by the court as its findings and an additional finding, No. 13, made by it, to which reference will be made later. A brief summary thereof will be sufficient for our purpose.

Title in fee to the premises involved was acquired by the United States in 1867, and since that time its record title has so remained. Over a period of many years the site was occupied by the United States as a post office and for other governmental purposes. But later, and "for some years

prior to the 26th day of May, 1939," the premises were not in use by anyone. On that date a contract for deed was entered into between S. R. A. and the United States. Under its terms, for a consideration of $121,101, to be paid, after the initial payment, at the rate of $9,500 during each of the next succeeding nine years, the United States agreed, if on May 26, 1949, the final due date, S. R. A. "has paid the total purchase price," with interest and otherwise complied with all the terms of the contract, to "execute and deliver to S. R. A. Incorporated a quit claim deed conveying to it or its nominee a marketable title to the premises, free and clear of all encumbrances, objections, or defects, *except such as may have accrued against the purchaser's interest in the property subsequent to May 26, 1939.*" (Italics supplied.) (The contract is silent on the subject of taxes, unless the italicized portion may point in that direction.)

Upon the execution of the contract, S. R. A. entered into full possession, razed the existing buildings, erected another, and made use of the remainder for an automobile parking lot, leasing the new building and parking lot for commercial purposes and for the rental income derived therefrom. No part thereof has since been devoted to any business or activity of the United States. S. R. A. has [fol. 65] taken and retains all rents and income for its own account. On May 1, 1940 (the assessment date under our law), the assessor of Ramsey county assessed the property upon the same basis as other like property, listing it for taxation as being owned by "S. R. A. Incorporated 'subject to fee title remaining in the United States of America.'" Instead of paying the taxes so levied, S. R. A. brought these proceedings.

Finding No. 13 reads: "That there is no authority, statutory or otherwise, which will permit the assessment of a tax against said premises subject to fee title remaining in the United States of America."

As conclusions of law the court held (1) that title to the premises was on May 1, 1940, in the United States "and that the same were exempt from taxation by the State of Minnesota or the County of Ramsey"; and (2) that "the tax assessed against the premises above described subject to fee title remaining in the United States of America for the year 1940 and the whole of said tax is illegal and void and of no force and effect."

"Only the question of immunity from taxation" was "submitted," all other questions being reserved "for determination at a later date in the event that the State prevails" upon that issue.

The state's blended motion for amended findings or new trial was denied, and it appeals. Under our practice, only that part of the order denying a new trial is here for review. That S. R. A. is in complete possession, and is enjoying full use, of the property as a commercial enterprise in competition with other like real estate in St. Paul is not, nor can it be, denied. As to its value, counsel stipulated, and the court found, that "for the purposes of determining the issue here submitted * * * the property in question was assessed and taxed as all other real property * * * and upon the same rates as other like real property" in [fol. 66] St. Paul, and that the assessor "determined" its "true and full value * * * as of May 1, 1940," to be $277,600. So, at the outset, it would seem to most people that this property and S. R. A.'s use and possession of it should bear its just proportion of the public tax burden.

1. As we pointed out in Reed v. Bjornson, 191 Minn. 254, 257, 258, 253 N. W. 192, "the power of taxation is inherent in sovereignty." As such, "constitutional provisions are not a grant of, but a limitation upon, this power, and except in so far as thus limited it is exhaustive and embraces every conceivable subject of taxation." As said by Mr. Justice Mitchell in County of Redwood v. Winona & St. P. Land Co. 40 Minn. 512, 517, 41 N. W. 465, 42 N. W. 473:

> "The taxing power, when acting within its legitimate sphere, is one which knows no stopping-place until it has accomplished the purpose for which it exists, viz., the actual enforcement and collection from every lawful object of taxation of its proportionate share of the public burdens; and, if prevented by any obstacles, it may return again and again until, the way being clear, the tax is collected."

The same thought is expressed in Nicol v. Ames, 173 U. S. 509, 515, 19 S. Ct. 522, 525, 43 L. ed. 786, 791, in this fashion:

> "The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation

as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive."

2. Taxes have been defined as "pecuniary charges imposed by the legislative power of the state upon property to raise money for public purposes." Davidson v. County of Ramsey, 18 Minn. 432, 434 (482); "a burden imposed for the very lifeblood of the state," London & N. W. Am. Mtge. Co. v. Gibson, 77 Minn. 394, 399, 80 N. W. 205, 777. In some of our cases we have characterized a tax as a "contribution" by the citizen in return for the protection afforded him by the state. But this, obviously, is an erroneous theory, since the "power to tax is not a statutory right, but an incident of sovereignty." Webb v. Bidwell, [fol. 67] 15 Minn. 394, 397 (479).

Mr. Justice Stone (now Chief Justice of the United States Supreme Court), in a dissenting opinion (G. N. Ry. Co. v. Weeks, 297 U. S. 135, 155, 80 L. ed. 532, 544) said: "Taxation is but a method of raising revenue to defray the expenses of government, and of distributing the burden among those who must bear it."

3. We think the state's power to tax S. R. A.'s interests and rights cannot be doubted. So the question is only whether the legislature has provided the necessary mechanics for reaching its interests. It is for the legislature to devise the mode, form, and extent of taxation to be imposed. Webb v. Bidwell, 15 Minn. 394 (479); 6 Dunnell, Dig. & Supp. § 9115, and cases under note 23.

4. Under our law, real estate taxes are assessed and enforced against the land itself. They are not charges against the person owning the property or his estate. Proceedings to enforce them are strictly *in rem*. In that respect they differ from personal property taxes, which are enforced *in personam*, although assessed and imposed because of property ownership. 6 *Id.* § 9281; and cases under notes.

5. Real estate for taxation purposes, by Minn. St. 1941, § 272.03, subd. 2 (Mason St. 1927, § 1977), includes "the land itself," all "structures and improvements" upon it as well as "all rights and privileges" belonging or appertaining to the land, "and all mines, minerals, quarries, fossils, and trees on or under the same." It will thus be seen

that each parcel of real estate is a separate entity, a unitary item. In proceedings to enforce the tax it is the property itself that is charged. The obvious purpose of so levying and enforcing the tax is to reach all interests and equities in the property, so that in the tax proceedings, if otherwise regular and valid, the holder of the tax certificate ultimately becomes the owner of the fee. In the instant case, S. R. A. [fol. 68] takes the view that, since the fee is still in the United States and cannot be reached, therefore its interest in the property may not be reached, and this upon the theory that there is no provision under our law by which a mere "equity" of the purchaser may be reached in the circumstances here appearing.

The state does not question tax immunity as to the United States and does not claim that as to it the fee title may be divested. Its position is that S. R. A., having purchased the property in the usual course of a commercial transaction, stands in no other or better position than any other purchaser under a like contract with an individual or corporation. It points out that under our statutes and decision law the owner of the fee holds only the legal title as security for the payment of the purchase price; hence that the purchaser is charged with the entire burden of meeting all taxes that might lawfully be levied if it were dealing with anyone else. In other words, it takes the view that the tax burden is the same as if the United States had parted with its title and taken a mortgage back for the unpaid portion of the purchase price. Furthermore, it contends that S. R. A. is not in a position to use the Federal Government's tax immunity as a barrier to the enforcement of the tax as levied. And, since the United States is not a party to this proceeding, S. R. A. cannot be heard as the champion of the government's interests or right of tax immunity.

6. By L. 1907, c. 328, § 1, now Minn. St. 1941, §§287.01, 287.02, 287.03, 287.04 (Mason St. 1927, § 2322), it was provided:

> "The words 'real property,' 'real estate' and 'land,' as used in this act, in addition to the definitions thereof contained in the Revised Laws 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the word 'mortgage,' as so used, shall mean any instrument creating or evidencing a lien of any kind on

such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. *An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed,* [fol. 69] *for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price.*" (Italics supplied.)

7. A mortgage upon real estate, as we have consistently held, while in form a conveyance of an estate or interest in land, in its purpose and effect is a mere lien or security—a chattel, or thing in action, which passes to the mortgagee's administrator or executor. 4 Dunnell, Dig. & Supp. § 6145, and cases cited under notes 1 to 4, inclusive.

8. This statute has been before this court in many cases and has withstood constitutional and other attacks. For our purpose, the summation of our prior cases made by this court in Summers v. Midland Co. 167 Minn. 453, 455, 209 N. W. 323, is worthy of quotation here:

"What is the status of the parties to such contract for deed? The vendor holds the legal title merely as security for the payment of the purchase price. He has a lien thereon for his claim. In legal form he has agreed to convey a good title at a future time. But we must look to the substance of the transaction more than to the form. The vendee is the equitable and substantial owner subject only to the payment of the balance of the purchase price. Possession is important. He cannot be ousted by the vendor in the absence of default. He pays the taxes. The relation is substantially that of mortgagor and mortgagee. • • • The only difference is a more efficient remedy in case of default. The vendor holds the title in trust for the vendee. • • • The vendee's interest in the land may be sold on execution. • • • It may become the subject of a trust or power in trust and it may be mortgaged. • • • It may be a homestead. • • •, The vendee may recover damages resulting from trespass. • • • Indeed the vendee must bear the losses due to fires or the elements. • • • He must bear the deterioration. He has an insurable interest. He is entitled to

benefits that may accrue. His interest is an estate of inheritance. He is clothed with the indicia of ownership to the same extent as if he had taken a deed and given a purchase-money mortgage. The balance of the purchase money is treated as a part of the personal estate of the vendor and goes to his personal representative, but the interest of the vendee is regarded as real estate passing to his heirs and not to his personal representative." (Asterisks indicate the citation of supporting cases.)

[fol. 70] In one of our latest cases, First & Am. Nat. Bank v. Whiteside, 207 Minn. 537, 543, 292 N. W. 770, we said:

"The relationship (between the vendee and vendor) was similar to that created by mortgage or conditional sale, the beneficial interest being in the vendee and the security interest in the vendor."

S. R. A. cites and relies upon such cases as N. P. R. Co. v. Traill County, 115 U. S. 600, 610, 6 S. Ct. 201, 204, 29 L. ed. 477, 480, holding:

"If the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the costs of surveying these lands. If, on the other hand, the sale would not confer such a title, it is because there exists no authority to make it.

"At all events, the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of the right to them until these costs are paid.

"We are aware of the use being made of this principle by the companies, who, having earned the lands, neglect to pay these costs in order to prevent taxation." But, continued the court, "The remedy lies with the Congress and is of easy application. * * * The courts can do no more than declare the law as it exists."

We do not believe that these cases are helpful in the situation here presented, since they are founded upon the theory that a tax title, once acquired, divests all interests

and rights, no matter by whom possessed. Minn. Const. art. 9, —1, dealing with the power of taxation, declares that "public property used exclusively for any public purpose shall be exempt from taxation." Obviously, the state's school and swamplands come within that class. But as soon as any such land is sold, usually under long-term payments, the purchaser's land is listed for taxation (as of May 1 after the purchase) and taxed as other real estate. His down-payment interest in the land may be, and usually is, only a small part of the purchase price, with the balance payable [fol. 71] in long-time installments. If he fails to meet the tax burden, anyone may acquire the state's rights at the tax sale or by taking an assignment of the taxes. Upon completion of the usual procedure, as in other cases, the tax certificate holder steps into the shoes of the original purchaser and may complete the performance of the original purchaser and thereby acquire the property. Minn. St. 1941, § 92.51 (Mason St. 1927, § 6323). Practically the same procedure is followed in cases where the land has been sold under contract by railroads. *Id.* § 272.21 (§ 2221). In either event, the tax title holder becomes in law an assignee of the rights of the original purchaser. As such, his tax burdens remain, and his rights and interests are exactly the same as those of other landowners. If there be tax default where no one is willing to take over the tax interests of the state, the practice is to cancel the contract. If it be land owned by the state, all taxes are cancelled and the land re-appraised and sold anew.

9. In North Dakota the county is the agency through which the state collects its real estate taxes. Thus the procedure there is like our own. 6 Dunnell, Dig. § 9124, and cases under notes. In the recent case of State v. Sheridan County,—N. D.—, 6 N. W. (2d) 51, 54-55, it was held:

> "*The mortgage* held by the Board of University and School Lands *was a lien prior to all general taxes*, and any lien or estate that might result from or be based upon such taxes. *Nevertheless, the land was subject to taxation, and it was the duty of the county officers to cause taxes to be assessed against such land the same as against other property subject to taxation.* If the taxes were not paid, and became delinquent, it became the duty of such officers to cause the land to be sold at tax

> sale, and if there were no bidders to bid the same in for, and in the name of, the county. The county had the right to sell and assign the certificate of sale, and if no redemption were made the county had the right to have issued to it a tax deed, after proceedings had as prescribed by law." (Italics supplied.)

And further, in respect to the efficacy of a tax deed, the court said:

> [fol. 72] "Plaintiff (the state) may foreclose such mortgage. But the county may pay the mortgage, or in case of foreclosure, it may make redemption. The county may also sell the land in the manner prescribed by law, and the purchaser will have the right to pay off the mortgage, or in case of a foreclosure, to make redemption."

We can see no distinction in principle between the tax methods employed in our state in respect to state school and swamplands and the state of North Dakota's first mortgage to its Board of University and School Lands. It must be constantly borne in mind that the purchaser of property, whether from the state or the national government, must share the normal tax burdens along with other property owners and upon the same basis.

We have not overlooked such cases as *United States* v. *City of Milwaukee*, 100 F. 828, and other like cases cited by counsel. The holding there was, as in the other cases cited and relied upon, that as long as the government retains the legal title as security for the payment of any part of the purchase money the land is not subject to taxation. Having disposed of the land grant cases, upon which the others are founded, we think it naturally follows, insofar as S. R. A.'s claim to tax immunity goes, that such cases, which are largely those of lower federal courts, must fall with them.

As to *State* v. *Itasca Lbr. Co.* 100 Minn. 355, 111 N. W. 276, this court placed its decision upon the authority of the Milwaukee case and the other cases there cited. The only question presented there was summarized by the court in this fashion (100 Minn. 357, 358):

> "The presentation of the scrip, with an application to locate it upon certain land, gave the applicant the pre-

> ference over other subsequent claimants of the land: but, until the application was approved and acted upon by the commissioner, the applicant acquired no interest, legal or equitable, in the land as against the United States."

Here, under our law, there can be no doubt that S. R. A. has not only a contractual *interest* in the property, but also, by virtue of its contract, the *equitable title* thereto, a right [fol. 73] of the same magnitude as if an outright grant had issued and a purchase money mortgage had been given to secure the unpaid balance. It is equally clear that, so far as the federal government's interests and rights are concerned in these tax proceedings, no claim of the state is made or threatened. *Cf.* City of New Brunswick v. United States, 276 U. S. 547, 48 S. Ct. 371, 72 L. ed. 693.

10. Another reason why we think S. R. A. should not be allowed to escape its tax burden is that it is not in position to champion the federal government's tax immunity. The United States is not a party. It has not been impleaded, nor has it made any effort to come into the case. That it is capable of defending and protecting its own rights of immunity, if any are threatened, no one can doubt. It is S. R. A.'s property that is taxed, not that of its vendor.

S. R. A.'s claim is somewhat similar to that involved in the recent case of Ex parte Kumezo Kawato, —U. S.—, 63 S. Ct. 115, 87 L. ed. 94, 96 (opinion filed November 9, 1942). There the question was whether a resident alien who had suffered injuries while engaged in the performance of his duties on a vessel and who sought allowance for maintenance and cure could maintain an action against the claimants of the vessel, who asserted, and it was admitted, that this country was at war with Japan, and that, since the alien was a native of that country and an enemy alien, "therefore (he) had no 'right to prosecute any action in any court of the United States during the pendency of said war.'" The trial court granted a motion to abate the action on that ground, and the Supreme Court reversed, taking the view that:

> "In asking that the rights of resident aliens be abrogated in their behalf, private litigants in effect seek to stand in the position of government. But only the government, and not the private individual, is vested

with the power to protect all the people, including loyal aliens, from possible injury by disloyal aliens. If the public welfare demands that this alien shall not receive [fol. 74] compensation for his work or payment for his injuries received in the course of his employment, the government can make the decision without allowing *a windfall to these claimants.*" (Italics supplied.)

Here, as much as in that case, S. R. A. should not be allowed "a windfall," as obviously it would be were its position to be sustained. *Cf.* State v. Casualty Mut. Ins. Co. 213 Minn. 220 6 N. W. (2nd) 800 (Opinion filed November 13, 1942).

11. Finding No. 13, so-called, was not within the stipulated facts. It was inserted by the court on its own motion. It is without support as a finding of fact and amounts to no more than a conclusion of law. The facts being without dispute otherwise, it may be stricken as irrelevant to the issues.

Order reversed.

Julius, J. Olson, J.

[fols. 75-93] Petition omitted. Printed side page. 1, ante.

[fol. 94] In District Court of Ramsey County

Amended Petition

Now comes petitioner and respectfully alleges and shows:

I

That petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

[fol. 95]

II

That the United States of America was, on the 1st day of May, 1940, and for many years prior thereto, and now is, the owner of a certain tract or parcel of land situate,

lying, and being in the City of Saint Paul, County of Ramsey, and State of Minnesota, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabashaw Streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabashaw street and one hundred and sixty (160) feet on Fifth Street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, 67, and by John Randall and wife by deed dated April 10, 1867, recorded etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

that said real estate is described on the Tax Rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the [fol. 96] South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, and is assessed to S. R. A. Incorporated subject to fee title remaining in the United States of America.

III

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A," and made a part hereof by reference.

IV

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Mes-

sage being attached hereto, marked Exhibit "B," and made a part hereof by reference.

[fol. 97] V

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C," and made a part hereof by reference.

VI

That petitioner has paid to the Treasurer of the United States under the terms of the said contract of purchase the sum of Six Thousand Fifty-five and 05/100 Dollars ($6,055.05) as of May 26, 1939; t' further sum of Six Thousand Fifty-five and 05/100 Dollars ($6,055.05) with interest thereon at the rate of four percent (4%) per annum as of the 26th day of February, 1940, and that there was still due and owing to the United States of America on May 1, 1940 the sum of One Hundred Eight Thousand, Nine Hundred Ninety and 90/100 Dollars ($108,990.90) and that petitioner on May 1, 1940 was not entitled to receive from the United States of America through the Director of Procurement under the terms of said contract of purchase a quit claim deed conveying title to the property above described.

[fol. 98] VII

That the title to all of the premises above described was at all times herein mentioned and now is in the United States of America, and that the said premises are immune and exempt from taxation by the State of Minnesota or by the County of Ramsey under and by virtue of Article 4, Section 3 of the Constitution of the United States and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3rd day of March, 1849 and by virtue of the Act of Congress authorizing a state government for the territory of Minnesota, adopted by the Congress of the United States on the 26th day of February, 1857, and by virtue of Article 2, Section 3 of the Constitution of the State of Minnesota and by vir-

tue of Sections 1977 and 1979 Mason's Minnesota Statutes (Minnesota Statutes 1941, Section 272.03).

VIII

Notwithstanding that said property is exempt and immune from taxation by the State of Minnesota or the County of Ramsey, the said real estate so hereinbefore described was valued by the assessing officers of Ramsey County as of May 1, 1940, in the sum of Two Hundred Seventy Seven Thousand Six Hundred Dollars ($277,600.00), its classified [fol. 99] value being up upon the assessment lists at One Hundred Ele en Thousand, Forty Dollars ($111,040.00), to which was applied the tax rate of ninety-nine and ninety-eight one hundredths (99.98) mills, resulting in a tax in the sum of Eleven Thousand One Hundred One and 78/100 Dollars ($11,101.78).

IX

That the property above described was assessed and taxed on the records of Ramsey County, Minnesota "subject to fee title remaining in the United States of America"; that no authority exists by statute or otherwise to levy and assess a tax upon an interest in real estate in the State of Minnesota other than the whole interest therein.

X

That the action of the County of Ramsey and State of Minnesota in levying a tax upon said premises deprives this petitioner of a privilege and immunity secured to it under the Constitution of the United States; deprives it of property without due process of law and denies to it the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

[fol. 100] XI

That said real estate has been partially, unfairly, and unequally assessed, and has been assessed at a value greater than its real or actual value.

Wherefore, Petitioner prays for an order of the within Court:

1. Determining that the title to the premises herein described is in the United States of America, and that the

same are immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the purchase price therefor is paid in full to the United States and the petitioner is entitled to a conveyance from the United States.

2. Reducing the full and true value of said premises to the actual value thereof;

3. For such other and further relief as may to the Court seem just and proper; and

4. For its costs and disbursements herein.

Dated: This 23 day of April, 1941.

S. R. A. Incorporated, by Robert E. Albrecht, President, Petitioner.

[fol. 101] *Duly sworn to by Robert E. Albrecht. Jurat omitted in printing.*

(Exhibits A, B and C attached to this amended petition are identical with Exhibits A, B and C attached to original petition at folios 8 to 21 of this Record.)

[fol. 102] IN DISTRICT COURT OF RAMSEY COUNTY

STIPULATION OF FACTS

Whereas a petition to review the taxes for the year 1940 was filed herein by the above named petitioner raising two defenses (1) the immunity of the property hereinafter described from taxation and (2) that the said property was partially, unfairly and unequally assessed and assessed at a value greater than its real or actual value, and

Whereas the matter was heard by the Court on the question of immunity of the property from taxation only, the other defenses relating to valuation being expressly reserved for determination at a later date in the event that the State prevailed and findings of fact, conclusions of law and an order for judgment were entered that the title to the premises hereinafter described was in the United States of America on May 1st, 1940, that the premises were exempt from taxation by the State of Minnesota or the County of Ramsey and that the tax assessed against said premises for the year 1940 was illegal and void, and

Whereas on appeal to the Supreme Court of the State of Minnesota from an order of this Court denying the State' motion for a new trial, a decision was entered reported in 213 Minnesota 487; 7 Northwestern Reporter 2nd 484; by the Supreme Court, reversing the order of this court, and [fol. 103] the matter has been remanded to this court for a new trial, and

Whereas the parties hereto have agreed that the value of the premises hereinafter described on May 1st, 1940 was Two Hundred, Twenty-five Thousand Dollars ($225,000.00).

Now Therefore, it is hereby stipulated by and between the undersigned, the attorneys for the respective parties hereto,

I

That S. R. A. Incorporated is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and is the petitioner in the above entitled cause.

II

That the premises which are the subject of the above entitled petition are described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed [fol. 104] to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867 in Book P. P. of Deeds, page 65, 66 & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

and are situate in the City of Saint Paul, County of Ramsey, and State of Minnesota, at the intersection of Fifth and Wabasha Streets in said City; that the real estate is described on the tax rolls of Ramsey County, Minnesota, as

the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota.

III

That for tax purposes the premises so described are assessed upon the records of Ramsey County, Minnesota, to S. R. A. Incorporated "subject to fee title remaining in the United States of America."

IV

That the premises above described were acquired by the [fol. 105] United States of America by deed from various parties in the year 1867, and that the legal title to the said premises is now and ever since 1867 has been in the United States of America, save as the same may have been affected by the transactions with S. R. A. Incorporated as hereinafter set forth:

That in or about the year 1870 a building was erected upon the above described premises by the United States of America, and for many years thereafter the premises were occupied by the United States of America as a post office and as an office for various departments of the United States, including the Department of Internal Revenue; that for some years prior to the 1st day of April, 1939, neither the building on the premises nor any portion of the premises had been occupied by the United States of America or by any other person whatsoever.

V

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A" and made a part hereof by reference.

[fol. 106] VI

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the

United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B" and made a part hereof by reference.

VII

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C" and made a part hereof by reference.

VIII

That subsequent to the 26th day of May, 1939, the building which had been erected upon the premises by the United States of America was razed, demolished, and destroyed by S. R. A. Incorporated; that subsequent thereto and prior to the 1st day of May, 1940, a building had been erected upon said premises by S. R. A. Incorporated; that on the 1st day of May, 1940, stores in said building had been leased [fol. 107] by S. R. A. Incorporated to various tenants, and the balance of the premises not covered by the building had been leased for automobile parking purposes, and that all of said premises on May 1, 1940, was used for purposes of a commercial nature, and no part or portion thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

IX

That S. R. A. Incorporated had paid to the United States of America the payment accompanying the proposal of April 17, 1939, of $5,755.05; the payment accompanying the supplemental proposal of April 21, 1939, of $300.00; the payment due February 26, 1940, of $6,055.05, with interest thereon at 4% per annum; and on May 1, 1940, no other payments had been made to the United States of America, and there was then due and owing to the United States of America the sum of $108,990.90 on account of the purchase price.

X

For the purposes of determining the issue here submitted and without prejudice to any other issue, it is stipulated that

[fol. 108] the property in question was assessed and taxed as all other real property in the County and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; that the tax records of said Ramsey County, Minnesota, of taxes levied and assessed for the year 1940 were duly certified on January 6, 1941, by Eugene A. Monick, County Auditor of said Ramsey County, including the property in question, to be a correct list of the taxes levied upon the real property in said County of Ramsey for the year 1940; and that on said last mentioned date Elsa M. Obst duly certified that she received the said tax records from the said County Auditor; and that said tax records contained the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of "S. R. A. Incorporated (subject to the fee title remaining in the United States of America)"; description of property; the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota; assessed valuation $111,040; general tax $11,101.78; total general tax $11,101.78; street sprinkling $27.97, total tax $11,129.75; and that said tax records have been in the possession of the said County [fol. 109] Treasurer for the collection of said taxes ever since said last mentioned date. That the tax rate applicable to the property in question for the year 1940 was 99.98 mills upon the assessed valuation.

XI

That it is agreed that for the purposes of this litigation the full and true value of the premises described in Paragraph II hereof as of May 1, 1940 was $225,000.00; that such valuation of $225,000.00 is the full and true value without deduction of any amount on account of the balance remaining due on May 1, 1940 to the United States of America under the contract hereinbefore described.

Dated: This 11th day of April, 1944.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for County of Ramsey and State of Minnesota. Otis, Faricy & Burger, Attorneys for Petitioner.

(Exhibits A, B and C attached to this stipulation are identical with Exhibits A, B and C attached to original petition at folios 8 to 21 of this Record.)

[fol. 110] In District Court of Ramsey County

Findings of Fact and Conclusions of Law

The petitioner having filed a petition to review the taxes for the year 1940 as provided by Minnesota Statutes 1941, Section 278.01 (Mason's 1940 Supplement, Section 2126-1), the matter having been tried and resulting in Findings of Fact and Conclusions of Law in favor of the petitioner, and after appeal to the State Supreme Court the matter having been remanded to this court for re-trial as appears from the decision of that court reported in 213 Minn. 487, 7 N. W. Rep. 2nd 484, came on regularly before the undersigned, one of the judges of the above named court on the 12th day of April, 1944. The State of Minnesota was represented by James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney; the petitioner, S. R. A. Incorporated, was represented by Roland J. Fariey, its attorney.

The petitioner having stipulated to the facts and the court having heard counsel and being fully advised in the premises makes the following:

[fol. 111] Findings of Fact

I

That S. R. A. Incorporated is a corporation duly organized and existing under the laws of the State of Minnesota.

II

That the description of the premises in question is, the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capitol of Minnesota, also known as the Original Town of Saint Paul, which premises are situate in the City of Saint Paul in said County and State on the northwest corner of 5th and Wabasha Streets in said city.

III

That the legal title to said premises has been in the United States of America since 1867; that since 1870 the said premises have been improved and were occupied by various departments of the government of the United States and particularly by the Department of Internal Revenue; that for some years prior to 1939 the premises were vacated [fol. 112] and were not used or required for governmental purposes; and that pursuant to Act of Congress the said property was declared by the Treasury Department of the United States to be in excess of its needs and was offered for sale.

IV

That on or about the 26th day of May, 1939, a contract for deed was entered into between S. R. A. Incorporated, and the United States of America under the terms of which the petitioner, S. R. A. Incorporated, agreed to pay to the United States of America as the purchase price of said premises, the sum of One Hundred Twenty-one Thousand, One Hundred one Dollars ($121,101.00) upon terms particularly set forth in the stipulation of the parties hereto, requiring payments in installments for a period of ten years and until May 26, 1949; and the United States of America agreed that when the total purchase price had been paid as provided, and the terms and conditions of the contract for deed had been complied with, to deliver to S. R. A. Incorporated, or its nominee, a quit claim deed to the premises and to deliver to it a marketable title, free of all encumbrances except such as may have accrued against the petitioners interest in the property subsequent to May 26, 1939; that under the terms of the same contract S. R. A. Incorporated was entitled to take immediate possession of the [fol. 113] premises, to sell, assign or lease any part or all of said premises without the approval of the United States of America, but subordinate to the interests of the United States, to obtain a deed to portions of the premises less than the whole upon advance payment of a portion of the purchase price to be determined by the United States of America; and that said contract is still in full force and effect.

There remained unpaid under said contract on May 1, 1940 the sum of $108,990.90.

V.

That subsequent to the 26th day of May, 1939, and prior to the 1st day of May, 1940, the petitioner S. R. A. Incorporated, took possession of said premises, razed, demolished and destroyed the building and improvements on said premises and erected thereon a new building, consisting of a number of stores, which on the 1st day of May, 1940 were and still are leased by the said petitioner to various tenants; the remainder of the premises not covered by the building, were and still are leased to another tenant for automobile parking purposes; and that all of said premises on May 1, 1940 were and still are used for the private commercial purposes of S. R. A. Incorporated, and no part thereof was devoted to the business or activities of the [fol. 114] United States of America; that the petitioner collected and retained the rents for its own account.

VI

The property in question was assessed and taxed as all other real property in said county and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; and that the tax records of said Ramsey County for the year 1940 contain the following entries pertaining to the assessment of the property in question, to-wit; assessed in the name of "S. R. A. Incorporated (but subject to the fee title remaining in the United States of America)" description of property: "The East Ten (10) feet of the South One hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota; that it was agreed between the parties hereto that the true and full value of said premises on the first day of May, 1940 was the sum of $225,000.00, without deduction of any amount on account of the balance remaining due to the United States of America under the contract hereinbefore described; that the assessed value of said premises on said last mentioned [fol. 115] date was the sum of $90,000.00; and that the tax rate for said year was 99.98 mills, resulting in a tax upon said premises for the year 1940 in the sum of $8,998.20, in

addition to an assessment for street sprinkling in the sum of $27.97, being a total of $9,026.17.

CONCLUSIONS OF LAW

I

That the assessment of the said property was duly made in accordance with the statutes of the State of Minnesota and was assessed and taxed as all other real property in said Ramsey County and upon the same rates as other like property.

II

That the petitioner, S. R. A. Incorporated, has, and on May 1, 1940 had, the equitable title to the said property, and that the United States of America has, and on said last mentioned date, had the legal title thereto, in trust for said petitioner as security for payment of the balance of the purchase price.

III

That said premises are not now and on May 1, 1940 were not immune or exempt from taxation by the State of Minnesota.

[fol. 116]

IV

That the State of Minnesota is entitled to judgment against the property described as follows: The East Ten (10) feet of the South One hundred five (105) feet of Lot Nine (9), also the South One Hundred five (105) feet of Lots Ten (10), Eleven (11) and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, which addition is sometimes referred to as the Original Town of Saint Paul, for taxes for the year 1940 in the sum of $9,026.17, which amount is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim or lien, of whatever nature in law or equity, of every person, company, or corporation, subject however, to the prior rights, liens and interests of the United States of America; and that unless such amount be paid, the land hereinbefore described shall be sold, as provided by law, to satisfy the amount to which it is liable, subject however, to the prior rights, liens and interest of the United States of America.

Let judgment be entered accordingly.

Dated at St. Paul, Minnesota, this 14th day of April, 1944.

J. C. Michael, Judge of District Court.

A stay of 20 days is hereby granted.

Michael, J., Judge of District Court.

[fol. 117] In District Court of Ramsey County

Judgment—Filed May 8, 1944

The above entitled matter having been heard before the Honorable James C. Michael, one of the Judges of the above named court, on the 12th day of April, 1944 pursuant to a petition filed by S. R. A. Incorporated, a corporation, to review the taxes for the year 1940 as provided by Minnesota Statutes 1941, Section 278.01 (Mason's 1940 Supplement, Sec. 2126-1), resulting in the filing of findings of fact and conclusions of law herein directing the entry of judgment in favor of the State of Minnesota,

Now Therefore,

It Is Hereby Adjudged, That the parcel of land herein after described, is liable for taxes to the amount set opposite the same, as follows:

Description	Amount
The East Ten (10) feet of the South One Hundred five (105) feet of Lot Nine (9), also the South One hundred five (105) feet of Lots Ten (10), Eleven (11) and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, which addition i sometimes referred to as the Original Town of Saint Paul	$9,026.17

[fol. 118] The amount of taxes to which, as hereinbefore stated such parcel of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation, subject however, to the prior rights, liens and interests of the United States of America; and It Is Adjudged that, unless the amount to

which such parcel is liable be paid, such parcel be sold, as provided by law, to satisfy the amount to which it is liable, subject however, to the prior rights, liens and interests of the United States of America.

Dated this 8th day of May, 1944.

J. J. Fitzgerald, Clerk of the District Court, County of Ramsey.

[File endorsement omitted.]

[fol. 119] In District Court of Ramsey County

Notice of Appeal to Supreme Court of State of Minnesota

To James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney, attorneys for the County of Ramsey and State of Minnesota, and to J. J. Fitzgerald, Clerk of the aforesaid Court:

Take Notice that the petitioner, S. R. A. Incorporated, appeals to the Supreme Court of the State of Minnesota from the judgment and the whole thereof, entered herein on May 8, 1944.

Otis, Farley & Burger, Attorneys for Petitioner, W-1862 First Nat'l Bank Bldg., St. Paul, Minnesota.

[fol. 120] In Supreme Court of Minnesota

[File endorsement omitted]

In re Petition of S. R. A. Inc. to have determined its claim that the property herein described is exempt from taxation, etc., for 1940.

22952 Syllabus

1. The doctrine of the federal land-grant cases is the result of a special statutory creation designed by Congress to implement the function of the federal government in settling and developing the public domain and has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign.

2. The entryman by his entry under the federal Homestead Act acquires only a right of possession as against tres-

passers and all others except the United States; he acquires no equitable title or equitable interest in the property until he has complied with all the statutory conditions essential for obtaining a patent; and the vesting of the equitable estate in the entryman is simultaneous with the acquirement of an absolute right to a patent.

3. An equitable title under an executory sales contract passes from the vendor to the vendee in its entirety and not on a fractional or piecemeal basis.

4. The general rule that a contract for the sale of land, part of the purchase price being paid, vests in the vendee the equitable title with the bare legal title remaining in the vendor as security for the payment of the purchase price, [fol. 121] applies to contracts where the vendor is the federal government as well as to contracts between citizens.

5. The character or status of the owner of the equitable title and not that of the holder of the legal title determines whether the equitable estate is subject to taxation, and neither the vendor's liability for nor immunity from taxation passes with the equitable title to the vendee.

6. A tax levy upon the vendee's equitable interest is not, directly or indirectly, a tax upon the vendor's legal estate.

7. Without violation of the implied constitutional immunities from taxation, a state may levy a uniform and nondiscriminatory tax upon the equitable interests of purchasers of property from the United States under executory sales contracts, although such sovereign vendor might receive a higher price therefor if it were known in advance that a purchaser's equity would not be subject to taxation.

8. A state may levy a tax upon a limited interest or estate in real property and, upon default, hold a tax sale of such limited interest or estate, subject to, and without impairing, an outstanding superior lien or other estate.

9. The difference between the security right obtained under a mortage and that provided for by the retention of the legal title under an executory sales contract is a matter of form only and not of substance.

The judgment appealed from is affirmed.

[fol. 122] OPINION—Filed April 13, 1945

MATSON, Justice:

This is an appeal from a judgment of the district court determining that the equitable title to certain real estate in St. Paul was on May 1, 1940, vested in the petitioner, S. R. A., Inc., and that the legal title thereto was then vested in the United States in trust for said petitioner as security for the payment of the balance of the purchase price, and further determining that said premises were not exempt or immune from the 1940 taxes assessed and levied on said date. Pursuant to the original petition filed for a review of the taxes for the year 1940 as provided by Minn. St. 1941, § 278.01 (Mason St. 1940 Supp. § 2126-1), hearing was had thereon which resulted in findings of fact and conclusions of law in favor of the petitioner. Upon appeal, the order of the lower court was reversed and the matter was remanded for retrial, as appears from our former decision in In re Petition S. R. A. Inc. 213 Minn. 487, 7 N. W. (2d) 484, and upon such retrial the aforesaid judgment was entered. The only question now raised is whether our former decision denying tax exemption for said premises is the law of the case and controlling on this appeal in the light of the recent decision of the United States Supreme Court in United States v. County of Allegheny (1944) 322 U. S. 174, 64 S. Ct. 908, and certain other decisions cited by petitioner.

For convenience on this appeal, we shall summarize the facts, a more complete statement of which may be found in our former opinion. On May 26, 1939, the petitioner, as vendee, entered into an executory sales contract with the United States, as vendor, for the purchase of the old post-office building in St. Paul for $121,101, to be paid, in addi-[fol. 123] tion to a down payment, in annual installments of $9,500 each during the succeeding nine years, and upon the making of the final payment on May 26, 1949, the United States agreed to convey a marketable title to said premises to the petitioner by quitclaim deed. Upon execution of the contract the petitioner took full possession, razed the old building, erected a new one for commercial rental, and otherwise entered into the full beneficial use of the premises. On May 1, 1940, Ramsey county assessed the premises upon the same basis as other like property, listing

it for taxation as being owned by S. R. A., Inc. "*subject to fee title remaining in the United States of America.*" Instead of paying the taxes so levied, petitioner brought these proceedings. The issue as to the full and true valuation of said premises was determined by stipulation.

The decision of United States v. County of Allegheny, 322 U. S. 174, 179, 64 S. Ct. 908, 912, hereinafter designated as the Mesta case, is in our opinion not controlling. Mesta Machine Company was engaged in the manufacture of large field guns for the national government under a cost-plus-and-fixed-fee contract in which taxes levied against Mesta "upon the transaction of this purchase of guns" was a reimbursable cost item. Mesta owned a plant with certain machinery. Additional machinery, belonging to the United States, was leased to Mesta and affixed to the realty so as to be removable without injury to the premises. Allegheny county levied a real property ad valorem tax against Mesta's mill and in valuing the real estate for taxation specifically included the value of the machinery owned by the federal government. The Pennsylvania Supreme Court (Mesta Mach. Co. Case, 347 Pa. 191, 32 A. [2d] 236) held that the tax was levied on the mill as an entity; that, since the record title to the land was in Mesta regardless of who owned the machinery, its value was property included as part of the real-estate valuation; and that, although the [fol. 124] machinery was included in the valuation, the assessment was not against the United States or its property, but only against Mesta and its realty holdings. Upon appeal by Mesta, with the United States intervening, the United States Supreme Court held the assessment invalid as a violation of the federal constitution insofar as it purported (322 U. S. 192, 64 S. Ct. 918) "to authorize taxation of the property interests of the United States in the machinery in Mesta's plant, or to use that interest to tax or to enhance the tax upon the Government's bailee." This decision involves facts and issues entirely different from the instant S. R. A. case and is to be distinguished in the following particulars: (1) Both the legal and equitable title to the machinery, valued as part of the assessed tax valuation, were in the United States; (2) the entire plant, of which the machinery was an essential part, was by contract employed as a means to discharge the important national function of waging war; (3) the inclusion of the value of the machinery enhanced the burden of the lien

on the underlying land, and if, by reason of this enhancement, it became necessary to collect the tax by selling the land, the result would be as disastrous to the war effort as if the machinery itself were sold; (4) Mesta as a bailee of the machinery was under a duty to assert the defense of tax immunity to protect the property interests of its bailor, the United States, from unlawful burdens.

Other decisions cited by the petitioner are hereinafter distinguished in our consideration of the land-grant doctrine.

1. Petitioner contends that the instant case is controlled by the decision of Irwin v. Wright, 258 U. S. 219, 42 S. Ct. 293, 66 L. ed. 573. We submit that this decision, and all the land-grant cases in general, are not in point. There is little if any similarity between the interest of an entryman [fol. 125] as a beneficiary of a land grant and the vendee in a contract of purchase and sale. In the former, the entryman acquires neither the equitable title nor the legal fee until he has completely fulfilled the conditions which entitle him to a patent, but in the case of the vendee the equitable title vests at once although the bare legal title remains in the vendor as security for the payment of the purchase price.

An examination of the land-grant acts in general reveals that the equitable title was purposely withheld from the entryman until he had complied with all conditions necessary for obtaining a patent, and this was done as a matter of congressional intent to insure that the public domain would be given only to stable citizens who had actually demonstrated that they were desirous and capable of establishing permanent homes. Similar considerations governed grants for the construction of railroads. In other words, we have a special statutory creation designed for developing the public domain. Obviously, the disposal of public lands was not a matter of sale at all but rather of a gift on condition, and this gift on condition was not according to the common-law concept, but according to certain statutory conditions designed to satisfy a special need. Missouri, Kansas, and Texas Ry. Co. v. Kansas Pacific Ry. Co. 97 U. S. 491, 24 L. ed. 1095. As a unique statutory creation, it has had nothing in common with a written contract for the sale of land except that it ultimately effected a transfer of title. In some respects, however, the interests

of the entryman under this statutory creation may be compared to that of a donee under a parol gift of land under the statute of frauds.[1]

An examination of the Homestead Act in particular (see, [fol. 126] 43 U. S. C. A., §§ 161-302), anent which most of our land-grant decisions have been made, indicates that congress has thereby created a set of legal and equitable relationships between the homestead entryman and his government which bear very little resemblance to the legal and equitable principles governing a vendor and vendee. The act constitutes the government's standing offer to donate and convey a limited portion of the public domain to certain natural, though unidentified, persons who are able to qualify themselves to accept the offer by complying with specified conditions precedent. As a preliminary to qualifying himself to accept the offer, the entryman must identify himself and the homestead premises he desires by an act of registration or entry. Until he has qualified himself for acceptance of the offer by complying with the residential, improvement, cultivation, and other statutory requirements, he has no vested right against the government. Unlike the vendee under a contract of purchase, he has no devisable estate, no right of alienation except for specified public purposes, no right to change his residence, no right to declare himself a trustee of the land for another, and, with certain statutory exceptions, he may not even intermarry with an entrywoman. Unlike the vendor, the government as offering donor on condition has no right of specific performance and no right to damages for breach of condition; in fact, there is no binding contract. The entryman is free at all times, without penalty or liability of any kind, to abandon his efforts to qualify himself for acceptance of the government's offer to convey by patent.

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[1] "* * * It has been said that a parol gift of land is on the same footing as a parol sale of land, and that in order to take a parol gift of land out of the statute of frauds possession must be taken in pursuance of the gift, and *as a further condition to the consummation of the equitable right and title, the donee must have made improvements of a valuable and permanent character, induced thereto by the promise to give the land.*" (Italics supplied.) 24 Am. Jur., Gifts, § 68. See, 38 C. J. S., Gifts, § 57.

In Hall v. Russell, 101 U. S. 503, 25 L. ed. 829, we have a typical land-grant case involving the contsruction of the Oregon Donation Act to determine the congressional intent and the property rights resulting thereunder. One Loring, a single man, in 1852 settled on the land with a view to becoming its owner under the operation of the act. He had all the qualifications necessary to enable him to take and hold under the act, but died after a residence on the land of [fol. 127] less than a year, leaving a will whereby he devised his entire estate, with minor exceptions to one Hall. The question for determination on appeal was whether Loring had a devisable estate. (See, Oregon Donation Act [9 stat. c. 76], the relevant sections of which provide [2].) Mr. Chief Justice Waite, in holding that settler Loring had no devisable estate, said (101 U. S. 509, 25 L. ed. 831):

> "The opening words of sect. 4 are 'that there shall be, and hereby is, granted.' This is appropriate language in which to express a present grant, but as [fol. 128] was well remarked by Mr. Justice Field for the court in Missouri, Kansas, and Texas Railway Company v. Kansas Pacific Railway Company (97 U. S. 491), 'It is always to be borne in mind, *in con-*

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[2] "Sec. 4. * * * That there *shall be, and hereby is, granted* to every white settler or occupant of the public lands, * * * now residing in said Territory, or who shall become a resident thereof on or before the first day of December, eighteen hundred and fifty, *and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act*, the quantity of one half section, * * *: *Provided, further*, That all future contracts by any person or persons entitled to the benefit of this act, for the sale of the land to which he or they may be entitled under this act before he or they have received a patent therefor, shall be void; * * *.

"Sec. 5. * * * That to all white male citizens of the United States * * * emigrating to and settling in said Territory between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three; * * * *who shall* * * *, *comply with the foregoing section* and the provisions of this law, *there shall be, and hereby is, granted* the quantity of one

struing a congressional grant, that the act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress.' There cannot be a grant unless there is a grantee, and consequently there cannot be a present grant unless there is a present grantee. If, then, the law making the grant indicates a future grantee and not a present one, the grant will take effect in the future and not presently. * * *

"Coming then to the present case we find that the grantee designated was any qualified 'settler or occupant of the public lands * * * who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of the act.' *The grant was not to a settler only, but to a settler who had completed the four years of residence, &c., and had otherwise conformed to the act.* Whenever a settler qualified himself to become a grantee, he took the grant and his right to a transfer of the legal title from the United States became vested.

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quarter section, * * * if a single man; or if married, * * * the quantity of one half section, * * *."

"Sec. 7. * * * That within twelve months after the surveys have been made, or, where the survey has been made before the settlement, then within twelve months from the time the settlement was commenced, each person claiming a donation right under this act shall prove to the * * * surveyor-general, * * * that the settlement and cultivation * * * had been commenced, specifying the time of the commencement; and at any time *after the expiration of four years from the date of such settlement,* * * * *shall prove in like manner,* * * *the fact of continued residence and cultivation* required by the fourth section of this act; and upon such proof being made, * * * patents shall issue for the land * * *.

"Sec. 8. * * * That upon the death of any settler before the expiration of the four years' continued possession required by this act, all the *rights* of the deceased under this act shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler shall be sufficient to entitle them to the patent." (Italics supplied.)

But until he was qualified to take, there was no actual grant of the soil. The act of Congress made the transfer only when the settler brought himself within the description of those designated as grantees. *A present right to occupy and maintain possession*, so as to acquire a complete title to the soil, *was granted* to every white person in the Territory having the other requisite qualifications, *but beyond this nothing passed until all was done that was necessary to entitle the occupant to a grant of the land.* Whether the fee passed out of the United States before the claim was 'proved up,' it is not necessary now to consider. For the purposes of the present suit it is enough to show that *the occupant got no title himself, beyond that of a mere right of possession, until he had completed his four years of continued residence and cultivation.*

• • • • • • •

"Another provision is equally significant: 'All future contracts by any person entitled to the benefit of this act, for the sale of the land to which he may be entitled under this act before he or they have received a patent therefor, shall be void.' This must refer to sales after the necessary residence and cultivation were complete, because *the grant was only to a settler 'who shall have resided upon and cultivated the same for four consecutive years.'* • • •

• • • • • • •

"We conclude, therefore, that under sect. 4 *there was no grant of the land to a settler until he had qualified himself to take as grantee by completing his four years of residence and cultivation, and performing such other acts in the mean time as the statute required* [fol. 129] *in order to protect his claim and keep it alive. Down to that time he was an authorized settler on the public lands, but not a grantee. His rights in the land were statutory only, and cannot be extended beyond the just interpretation of the language Congress has used to make known its will.*" (Italics supplied.)

In Irwin v. Wright, 258 U. S. 219, 232, 42 S. Ct. 293, 298, 66 L. ed. 573, 589, Mr. Chief Justice Taft recognized the

land-grant entryman's interest as a special statutory creation when he said:

> "* * * We think, therefore, that the reason for the rule, making the acquisition of the equitable title the line between non-taxability and taxability, is stronger in case of reclamation homestead entrymen than in the instances where, before the Reclamation Act, it always applied. Moreover, the confusion caused in the past by the taxation, when specifically permitted, of indefinite and inchoate interests of the beneficiaries of government land grants, should prevent an inference of the congressional intention to depart from the rule requiring an equitable title in the entryman before state taxation, unless a purpose to permit earlier taxation is express or strongly implied."

Obviously, the congressional intent as expressed in the land-grant statutes is that the *equitable* title shall pass to the entryman only upon full compliance with all conditions necessary for obtaining a patent, and that the equitable title and the *right to a patent* shall be inseparable twins in their passage from the government to the entryman. It is difficult to understand how the principle of this special statutory creation ever came to be applied to the vendor-vendee relationship in cases involving the right of a state to tax the interest of the vendee under a contract where the federal government is the vendor. Typical of these cases are United States v. City of Milwaukee (C. C.) 100 F. 828; Lincoln County v. Pacific Spruce Corp. (9 Cir.) 26 F. (2d) 435; Mint Realty Co. v. Philadelphia, 218 Pa. 104, 66 A. 1130; ABR Corp. v. City of Newark, 131 N. J. L. 147, 35 A. (2d) 473; and Ken Realty Co. Inc. v. Johnson (5 Cir.) 138 F. (2d) 809. The confusion apparently has [fol. 130] arisen from the erroneous assumption that, because the entryman or beneficiary under a federal land grant acquires as against the sovereign no equitable title until he has complied with all conditions necessary to obtain a patent, the same result necessarily follows under a contract for deed *where the sovereign is the vendor*, and that therefore no equitable title vests in the vendee until he has performed all the contract terms and conditions prerequisite for obtaining a deed. With this error as a foundation, it has been further assumed that the decisions

in the land-grant cases, of which Irwin v. Wright, *supra*, is typical, establish the principle that under no circumstance is the interest of the vendee subject to state taxation until he has acquired, by complete performance of all contract terms and conditions, a right to a deed of conveyance on the theory that until such time both the equitable title and the legal fee remain in the sovereign vendor. Clearly, the land-grant cases are not in point and establish no principle applicable to contracts for the outright sale of government property. Obviously, the legal consequences of a sales contract are not determined by the special statutory provisions enacted by congress to govern the disposal of the public domain.

2. From the making of his entry until he satisfies the conditions requisite for obtaining a patent, the entryman has no vested equitable right by way of title, but only a right of possession as against trespassers and all others except the United States. His right to remain on the land in order to perform the conditions requisite for obtaining a patent may be regarded as an inceptive or inchoate title from the standpoint that only his own failure to qualify will prevent him from obtaining a vested equitable title accompanied by the right to a patent. See, Knapp v. Alexander-Edgar Lbr. Co., 237 U. S. 162, 35 S. Ct. 515, [fol. 131] 59 L. ed. 894. But see, Norton v. Evans, 82 F. 804 (8 Cir.) 27 C. C. A. 168. In some of the land-grant cases the right to remain on the land to perform the statutory conditions has been loosely referred to as an equitable title, but it is to be noted that in these very cases there had *not* been a full performance of all the conditions necessary for the accrual of a *right* to a patent, and, therefore, the equitable title had not passed to the grantee. For example, in the case of N. P. R. Co. v. Traill County, 115 U. S. 600, 6 S. Ct. 201, 29 L. ed. 477, the doctrine of which can best be ascertained by a perusal of the two decisions on which it is based, namely, Railway Co. v. Prescott, 16 Wall. 603, and Railway Co. v. McShane, 22 Wall. 444, the right to a patent had not been perfected, and, therefore, both the equitable and the legal title remained in the United States as security for the payment of the costs of making the surveys. In effect, the lien was both equitable and legal in its nature, and obviously the court could not allow a state tax upon an equitable estate still retained by the sovereign. Mis-

understanding and confusion result only when we forget that as a statutory creation the equitable title and the right to a patent are Siamese twins, and one does not go without the other. In the land-grant cases, we speak of a complete equitable title only in the sense that the right to the passage of such title has fully accrued.

3. Further confusion resulted from the plausible though erroneous theory, adopted by some courts, that the entryman acquired an equitable title piecemeal, or on the installment plan, until he earned a *perfect* or *complete* title by having complied with all the conditions prerequisite to obtaining a patent. The entryman in fact acquired nothing until the instant he was entitled to everything. If his com- [fol. 132] pliance with the statutory conditions fell short in any essential he had nothing, but the instant he had fully complied with them the equitable estate burst into full blossom as his property, and simultaneously therewith he acquired the right to a patent. Later, this anomalous doctrine of acquiring a *complete* equitable title on the installment plan was applied to the interest of the vendee under a contract for deed for the sale of land by the sovereign. In Lincoln County v. Pacific Spruce Corp. (9 Cir.) 26 F. (2d) 435, *supra*, the court in applying this theory held that only he who had acquired a *perfect* equitable title was subject to taxation. The court in Ken Realty Co. Inc. v. Johnson (5 Cir.) 138 F. (2d) 809, *supra*, however, expressly refused to follow the Lincoln County case and carried the theory to its logical conclusion by arriving at the curious result of holding the vendee subject to taxation on that fraction of the equitable title acquired to the date of each annual tax levy. It was held that the value of such fractional equity as a taxable interest was to be (138 F. [2d] 812) "measured each tax year by the value of the whole property diminished by the amount of unpaid purchase money." The wrongful interpretation of the principle of the land-grant cases and its misapplication to contracts for the sale of land by the sovereign have been bad enough without confusing the issue still further by giving birth to the doctrine that the equitable title passes from the vendor to the vendee on a piecemeal basis. Fundamental legal principles are not to be distorted merely because the sovereign is a party to the transaction. We choose to stand on the well-established principle that the equitable estate,

in its entirety, passes immediately to the vendee at the moment the contract goes into effect, and the bare legal title for security purposes remains in the vendor. The vendee's equitable title may be divested for failure of the [fol. 133] vendee to perform the conditions of the contract; but, until divested, such equitable title is wholly in the vendee. Village of Hibbing v. Commr. of Taxation, 217 Minn. 528, 14 N. W. (2d) 923; Town of Wolf River v. Wisconsin Michigan Power Co., 217 Wis. 518, 259 N. W. 710, 98 A. L. R. 1369. The instant vesting of the entire equitable title in the purchaser is consistent with his right to enjoy the entire use and benefit of the property (inclusive of both profits and increments in value) although he has paid only a fraction of the purchase price.

Aside from the fundamental difference between the interest of an entryman under a land grant and the interest of a vendee in a contract for deed, there is a further distinction between the instant case and the land-grant cases based on the fact that entirely different governmental policies and objectives are involved. The settlement and development of the public domain entailed the exercise of a major federal function that is not for a moment to be confused with the humdrum task of disposing of useless post-office property, useless in the sense that it no longer serves any governmental function. In Irwin v. Wright, *supra*, Mr. Chief Justice Taft called specific attention to the importance of the land-grant policies when he said (258 U. S. 231, 42 S. Ct. 298, 66 L. ed. 589): "The care with which the Government has thus framed its land policy to protect and encourage the homesteader is shown further in Ruddy v. Rossi, 248 U. S. 104, 105."[3] The function of settling the

[3] In Ruddy v. Rossi, 248 U. S. 104, 105, 39 S. Ct. 46, 63 L. ed. 148, 150, which upheld the constitutionality of § 4 of the Homestead Act of May 20, 1862 (Rev. Stat. § 2296), providing that no lands acquired under the act should ever become liable for the satisfaction of any debt contracted prior to the issuing of the patent, Mr. Justice McReynolds said: "*A manifest purpose was to induce settlement upon and cultivation of these lands by those who, five years after proper entry, would become owners in fee through issuance of patents. The great end in view was to convert waste places into permanent homes.*" (Italics supplied.)

public domain was of such importance that congress was [fol. 134] fully justified in withholding from the entryman the equitable title, not merely for the purpose of insuring that such lands would go only to those individuals who demonstrated their good faith and capacity as homemakers, but to leave them free from any burden of taxation until they had become firmly established. Here we have no such important federal function or interest. The sale of a piece of federal property which is no longer of use as a post office or for any other federal function is on the one hand for the mere purpose of salvaging its value and on the other hand for the purpose of returning it to the state tax rolls to bear its just share of the costs of local government. The levying of state taxes upon the equitable title of the petitioner impairs the exercise of no federal function. The implication that the petitioner justifiably paid more for the property than it would have done if it had not relied on tax immunity is unsound, and this is likewise true of the contention that to deny tax immunity to a vendee under an executory contract will prevent the federal government from realizing all that it is entitled to upon sale. Only a property interest or value is subject to sale, and whatever more is paid in excess of such value by reason of an alleged tax immunity is for a privilege that cannot constitutionally be sold or transferred. The individual never enjoys tax immunity as a right but only as an incidental windfall when, and only as long as, the imposition of a state tax in some way impairs, or interferes with, the exercise of a federal function.

4. It is well established by Minnesota decisions that a contract for the sale of land, part of the purchase price being paid, vests in the vendee an equitable title in fee with the bare legal title remaining in the vendor as security, and upon payment the vendor holds it in trust for the vendee. First & American Nat. Bank v. Whiteside, 207 Minn. [fol. 135] 537, 292 N. W. 770; Village of Hibbing v. Commr. of Taxation, 217 Minn. 528, 14 N. W. (2d) 923.[4]

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[4]Chemedlin v. Prince, 15 Minn. 263 (331); Groff v. Ramsey, 19 Minn. 24 (44); Randall v. Constans, 33 Minn. 329, 23 N. W. 530; Shraiberg v. Hanson, 138 Minn. 80, 163 N. W. 1032; Greenfield v. Olson, 143 Minn. 275, 173 N. W. 416;

It is likewise the federal rule that a contract for the sale of land, part of the purchase price being paid, vests in the vendee the equitable title with the bare legal title remaining in the vendor for security. In Lenman v. Jones, 222 U. S. 51, 54, 32 S. Ct. 18, 20, 56 L. ed. 89, 92, involving an appeal from a decree of the court of appeals of the District of Columbia, Mr. Justice Holmes, in referring to the appellee, who was the assignee of the vendee's interest in an executory contract for the purchase of land, said:

> "• • • As she in popular legal language became the equitable owner by her contract, she made the appellee the equitable owner by her contract with him—that is she gave him the right to insist in her place that the legal owner should give up the legal estate upon fulfillment of the conditions agreed."

In Bissell v. Heyward, 96 U. S. 580, 586, 24 L. ed. 678, 679, in speaking of an executory contract for the sale of land, the court said:

> "• • • The execution of the contract (with the partial payment thereon) was a transfer in equity of the title of the land to Bissell; leaving in the representatives of William C. Heyward simply a naked title as trustee for Bissell, to be conveyed upon performance on his part."

It is recognized that this is the general rule (First State Bank v. United States [9 Cir.] 92 F. [2d] 132, 134; First Nat. Bank v. Glens Falls Ins. Co. [4 Cir.] 27 F. [2d] 64, 67), and that it has existed from time immemorial. National Bank of Kentucky v. Louisville Trust Co. (6 Cir.) 67 F. (2d) 97, 100. See C. L. Gransden & Co. v. Commr. [fol. 136] of Int. Rev. (6 Cir.) 117 F. (2d) 80; Lewis v. Hawkins, 23 Wall. 119, 23 L. ed. 113; Laughlin v. North Wisconsin Lbr. Co. 176 F. 772; In re Estate of Reid, 26 Cal. App. (2d) 362, 79 P. (2d) 451; Calvin v. Custer County, 111 Mont. 162, 107 P. (2d) 134.

Benjamin v. Savage, 154 Minn. 159, 191 N. W. 408, 35 A. L. R. 97; Mark v. Liverpool & L. & G. Ins. Co. 159 Minn. 315, 198 N. W. 1003, 38 A. L. R. 310; Minnesota B. & L. Assn. v. Closs, 182 Minn. 452, 234 N. W. 872; S. R. A. Inc. v. State, 213 Minn. 487, 7 N. W. (2d) 484.

The same court which originated the piecemeal doctrine of equitable conversion in Ken Realty Co. Inc. v. Johnson (5 Cir.) 138 F. (2d) 809, held in Burger-Phillips Co. v. Commr. of Int. Rev. (5 Cir.) 126 F. (2d) 934, that a vendee under an executory contract for the purchase from the United States of the old post-office building in Birmingham, Alabama, with part of the purchase price paid and part unpaid, had an interest in land and that the United States as trustee for the vendee held the legal title, which it was bound to convey upon receiving full payment.

No basis exists for making an exception to the general rule where the government is the vendor. We respectfully submit that there is no federal authority holding that the equitable title fails to vest immediately in the vendee under an executory contract for sale of land, part of the purchase price being paid, merely because the sovereign is the vendor, except those decisions of the lower federal courts erroneously based on the land-grant doctrine and of which United States v. Milwaukee (C. C.) 100 F. 828, is typical. Although the government is the vendor, the general rule must control. In the absence of pertinent federal decisions or statutory provisions to the contrary, contracts between the United States and a citizen or private corporation are controlled by the same legal principles that govern contracts between private individuals. "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them." [fol. 137] United States v. Bostwick, 94 U. S. 53, 66, 24 L. ed. 65, 66; Cory Bros. & Co. v. United States (2 Cir.) 51 F. (2d) 1010, 1012. See, United States v. Guaranty Trust Co. 293 U. S. 340, 55 S. Ct. 221, 79 L. ed. 415; and Mason v. United States, 260 U. S. 545, 67 L. ed. 396.

5. In the former S. R. A. opinion, 213 Minn. 487, 7 N. W. (2d) 484, it was clearly pointed out that the equitable title of the vendee is subject to taxation although the sovereign as vendor stood immune from any tax levy. What would be the result in a case where the vendee is immune from taxation but the vendor is not? Reversing the situation in the instant case, does the equitable title of the vendee become immune from taxation under an executory contract in passing from a vendor who enjoys no tax immunity to a

vendee who does enjoy such immunity? Since the former S. R. A. case, this court has answered this question in the affirmative in Village of Hibbing v. Commr. of Taxation, 217 Minn. 528, 14 N. W. (2d) 923. In this latter case the Oliver Iron Mining Company as the vendor was subject to tax liability, but the vendee, the Benedictine Sisters Benevolent Association, if found to be the owner of the property, was exempt from taxation under Minn. Const. art. 9, § 1, in that it had acquired the property for use as a nonprofit public hospital. It became necessary to determine, among other things, whether at the time of the tax levy on May 1, 1941 (when the association still held merely as a vendee under an executory contract), the association was the owner of the hospital property within the meaning of the tax-exemption provisions of the constitution. The court in holding that it was such owner said (217 Minn. 533, 14 N. W. [2d] 926):

> "3. Although the legal title was in Oliver on May 1, 1941, the association was the *owner* of the property within the meaning of the tax exemption provisions of the constitution and the statute. While an executory contract for a sale or conveyance of land conveys in law no legal title, * * * in equity the purchaser is regarded, for purposes of taxation as well as for others, as the owner, subject to liability for the unpaid price, and the vendor as holding the legal title in trust for him."

[fol. 138] Another significant decision, in reverse of the instant case, and with the United States as the vendee, illustrating that the equitable title passes under an executory contract even though the sovereign is a party, and further illustrating that the tax status of the vendor, as to liability or nonliability for taxes, does not pass to the vendee with the passage of the equitable title, is the case of Calvin v. Custer County, 111 Mont 162, 107 P. (2d) 134. On April 28, 1938, Calvin gave the United States a written option to purchase certain lands, and on June 17, 1938, the latter accepted the option, subject to the obligation of Calvin to give good title, and took possession. The deed of conveyance was executed and delivered on November 15, 1939. By Montana statutes, taxes were then levied in March of each year. Defendants contended that the United States was

not the owner of the property until the deed was delivered, and that therefore the property was subject to the taxes levied in March 1939. Although the final conveyance to the United States pursuant to executory contract of purchase would not have been made if the title had not been made good by Calvin, the court found that the equitable title was in the United States (as soon as the option was accepted) on the day the 1939 taxes were levied and therefore exempt from taxation. The court said (111 Mont. 167, 168, 107 P. [2d] 136):

> "In the case of Town of Cascade v. County of Cascade, 75 Mont. 304, 243 Pac. 806, 808, it was said: 'It is the situation or character of the beneficial owner, the holder of the equitable title or estate, and not that of the holder of the legal title, * * * determines the question of exemption from taxation under our constitutional provisions and those of like import.'
>
> * * * * * * *
>
> "* * * We think that in determining in whom the equitable interest vested we must treat the United States as if it were a private person or corporation, amenable to suit."

6. Summarizing to this point, we hold that the doctrine of [fol. 139] the land-grant cases, a statutory creation designed to meet a special need, has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign. The general rule that a contract for the sale of land, part of the purchase price being paid, vests in the vendee the equitable title with the bare legal title remaining in the vendor as security for payment of the purchase price, applies to contracts where the vendor is the federal government as well as to contracts between citizens. Neither the vendor's liability for nor immunity from taxation passes with the equitable title to the vendee. The character or status of the owner of the equitable title and not that of the holder of the legal title determines whether the equitable estate is subject to taxation. A tax levy upon the vendee's equitable interest is not, directly or indirectly, a tax upon the vendor's legal estate.

7. Although we here find that no state tax has been imposed on any federal property, and that no immunity from taxation possessed by the vendor passed to the vendee as an incident to its acquirement of the equitable title, does the levy of a tax on the vendee's equitable title, by indirection or otherwise, interfere with the exercise of a governmental function? We think not. We have already pointed out that the sale of an old post-office property which is no longer of use is merely for the dual purpose of salvaging its investment value and for returning it to the state tax rolls. The exercise of the state's taxing power in a uniform and nondiscriminatory manner so as to impose no greater burden upon the buyers of government property than upon other buyers is not in violation of the implied tax-immunity doctrine. All that is required is that the sovereign, state or federal, be assured a fair and nondiscriminatory sale market in competing with other vendors. We shall, how- [fol. 140] ever, assume that property may bring a higher price if it were known in advance that the purchaser's equity would not be subject to taxation. The United States Supreme Court, in Group No. 1 Oil Corp v. Bass, 283 U. S. 279, 282, 51 S. Ct. 432-433, 75 L. ed. 1032, 1036-1037, with respect to taxation of the purchaser's interest, established the following rule:

> "But the remote and indirect effects upon the one government of such a non-discriminatory tax by the other have never been considered adequate grounds for thus aiding the one at the expense of the taxing power of the other. See Willcuts v. Bunn, 282 U. S. 216, 231; Educational Films Corp. v. Ward, 282 U. S. 379; Metcalf & Eddy v. Mitchell, 269 U. S. 514, 523-524. This Court has consistently held that where property *or any interest in it* has completely passed from the government to the purchaser, he can claim no immunity from taxation with respect to it, merely because it was once government-owned, or because the sale of it effected some government purpose. New Brunswick v. United States, *supra;* [and other cases cited].
>
> "Property which has thus passed from either the national or a state government to private ownership becomes a part of the common mass of property and

subject to its common burdens. Denial to either government of the power to tax it, or income derived from it, in order to insure some remote and indirect antecedent benefit to the other, would be an encroachment on the sovereign power to tax, not justified by the implied constitutional restriction." (Italics supplied.)

Mr. Justice Stone, who wrote the opinion in the foregoing case, later in Helvering v. Gerhardt (1938), 304 U. S. 405, 58 S. Ct. 969, 82 L. ed. 1427, put "the problem of implied immunities in terms of a balancing of the protection to one government against the diminution of the taxing power of the other." 26 Minn. L. Rev. 408, 409. The trend of recent decisions is to limit the scope of implied immunities "to prevent the immunity doctrine from unduly restricting the tax sources of the federal and state governments." Rottschaefer, American Constitutional Law (1939) § 82, p. 110. During the present period of constant expansion of federal government property holdings and activities, to be reasonably followed after the war by a sale of much property no longer needed for military purposes, it becomes imperative to protect the state taxing power from diminution through the indirect sale of tax immunity to the many pur- [fol. 141] chasers of federal property. In the instant case, the federal government has parted with its entire equitable estate to S. R. A., Inc., and therefore the latter can claim no immunity.

8. Does the taxation of S. R. A.'s equitable interest impair the security value of the federal government's legal title? Clearly not. Petitioner's contention that the state cannot hold a tax sale of vendee's equitable interest without having such sale confer a title paramount to all others so as to destroy the lien of the United States is without foundation, as pointed out in our former S. R. A. opinion, 213 Minn. 487, 496, 7 N. W. (2d) 484, 489.

Mr. Justice Holmes in Baltimore Shipbuilding & Dry Dock Co. v. Baltimore, 195 U. S. 375, 25 S. Ct. 50, 49 L. ed. 242, *in modifying or limiting* the application of N. P. R. Co. v. Traill County, 115 U. S. 600, 6 S. Ct. 201, 29 L. ed. 477, pointed out that a state may levy a tax on a limited interest or estate in the property and, upon default, sell such limited interest or estate, subject to, and without disturb-

ing or impairing, an outstanding superior lien or other estate.[5]

[fol. 142] In New Brunswick v. United States, 276 U. S. 547, 48 S. Ct. 371, 72 L. ed. 693, we have another case in point. The United States Housing Corporation, a federal agency, had built in New Jersey residences to house war-workers of World War I. After the war, having no further use for the buildings, the houses were sold to purchasers upon a ten-percent down payment with a mortgage back

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[5] In Baltimore Shipbuilding & Dry Dock Co. v. Baltimore, 195 U. S. 381-382, 25 S. Ct. 51, 49 L. ed. 244, Mr. Justice Holmes said:

"* * * It is true that commonly taxes on land create a lien paramount to all interests, and that a tax sale often has been said to extinguish all titles and to start a new one. Hefner v. Northwestern Life Ins. Co., 123 U. S. 747, 751; Textor v. Shipley, 86 Maryland, 424, 438; Emery v. Boston Terminal Co., 178 Massachusetts, 172, 184. Perhaps it was assumed that this always was the effect of tax sales in Northern Pacific Railroad v. Traill Co., 115 U. S. 600. But it needs no argument to show that a State may do less. It may tax a life estate to one and a remainder to another, and sell only the interest of the party making default. With regard to what the State of Maryland has done and what are the purport and attempted effect of the tax in this case, we follow the Court of Appeals. That court treated the tax and the lien as going only to the Dock Company's interest in the land, * * *.

"In the next place, as to the interest of the United States in the land. This is a mere condition subsequent. There is no easement or present right *in rem*. The obligation to keep up the dock and to allow the United States to use it carries active duties and is purely personal. The property is subject to forfeiture, it is true, if the obligation is not fulfilled. But it is only by forfeiture that the rights of the United States can be enforced against the *res*. It would be a very harsh doctrine that would deny the right of the States to tax lands because of a mere possibility that they might lapse to the United States. The contrary is the law. The condition cannot be extinguished by the State, but the fee is in the Dock Company, and that can be taxed, and, if necessary, sold, subject to the condition."

for the balance. Many purchasers, pursuant to sales contracts, had made the ten-percent down payment and were in possession but had neither received a deed of conveyance nor executed and delivered a mortgage for the balance when the city of New Brunswick assessed upon the full value of the property certain taxes for the year 1921. No deeds having been delivered at the time of the tax levy, the legal title was still in the federal agency. The housing corporation, with the United States joining by intervention, brought suit to enjoin any tax sales for the collection of the taxes. The court held that in equity the purchasers were the equitable owners and entitled to a conveyance of the title upon executing a mortgage as stipulated, and that they should be treated for the purposes of taxation as if they already held the legal title with a first lien in the United States to secure the balance of the purchase price. In pointing out how the paramount security right of the United States may be protected, the court in significant language said (276 U. S. 556, 48 S. Ct. 373, 72 L. ed. 698):

> "* * * although the City should not be enjoined from collecting the taxes assessed to the purchasers by sales of their interests in the lots, as equitable owners, it should be enjoined from selling the lots for the collection of such taxes unless all rights, liens and interests in the lots, retained and held by the Corporation as security for the unpaid purchase moneys, are expressly excluded from such sales, and they are made, by express terms, subject to all such prior rights, liens and interests. This, we think, will * * * fully protect the paramount right of the United States."

The New Brunswick and the Baltimore Shipbuilding Co. [fol. 142] cases, as well as that of United States v. Canyon County (Idaho) (D. C.) 232 F. 985 (the principle of this latter case allowing state taxation subject to a security lien in favor of the United States was approved in Irwin v. Wright, 258 U. S. 219, 42 S. Ct. 293, 66 L. ed. 573, *supra*), establish clearly how the state may protect the federal government's paramount lien right and how in turn the federal government may protect itself.

9. Any difference between a security right obtained under a mortgage and that provided for by the retention of the legal title under an executory sales contract is a matter of

form only, and not of substance. See, former S. R. A. opinion, 213 Minn. 487, 495-496, 7 N. W. (2d) 484, 488-489; First & Am. Nat. Bank v. Whiteside, 207 Minn. 537, 543, 292 N. W. 770, 774; McCreary v. McGregor, 183 Iowa 732, 167 N. W. 633; and Hatch v. Commerce Ins. Co., 216 Iowa 860, 249 N. W. 164.

All other issues raised by this appeal are fully determined by our prior S. R. A. opinion in 213 Minn. 487, 7 N. W. (2d) 484, and we find nothing in the authorities submitted by petitioner to justify its contention that such former decision is no longer the law of the case on this appeal.

The judgment appealed from is affirmed.

Leroy E. Matson.

[fol. 144] In Supreme Court of Minnesota

In the Matter of the Petition of S. R. A., Incorporated, a corporation, to have determined its claim that the property herein described is exempt from taxation and that the same was partially, unfairly and unequally assessed at a value greater than its actual value for the year 1940.

33952

S. R. A., Inc., Appellant,

vs.

State of Minnesota, Respondent

Judgment

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Ramsey be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Forty-One and 50/100 Dollars, ($41.50) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed April 24, 1945.

By the Court.

Attest:

Grace Kaercher Davis, Clerk.

[fol. 145] IN SUPREME COURT OF MINNESOTA

No. 33952

(Title Omitted)

STIPULATION AS TO RECORD—Filed June 18, 1945

Upon the proposed petition of the appellant to the Supreme Court of the United States for writ of certiorari to the Supreme Court of Minnesota, it is stipulated that the record to be certified to the Supreme Court of the United States by the Clerk of the Supreme Court of Minnesota, shall consist of:

1. The record filed by respondent (appellant then) of the proceedings in the District Court of Ramsey County, Minnesota in cause No. 33270 before the Supreme Court of the State of Minnesota.

2. The opinion of the Supreme Court of the State of Minnesota in said cause No. 33270 dated December 24, 1942.

3. The record filed by appellant of the proceedings in the District Court of Ramsey County, Minnesota in this cause before the Supreme Court of the State of Minnesota.

[fol. 146] 4. The opinion of the Supreme Court of Minnesota in this cause rendered on April 13, 1945.

5. The judgment of the Supreme Court of Minnesota in this cause.

6. This stipulation.

Otis Farley & Burger, Attorneys for Appellant. J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Deputy Atty. General; James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 147] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1] IN DISTRICT COURT OF RAMSEY COUNTY, SECOND JUDICIAL DISTRICT, STATE OF MINNESOTA

In the Matter of the Petition of S. R. A. INCORPORATED, a corporation, to have determined its claim that the property herein described is exempt from taxation and that the same was partially, unfairly, and unequally assessed, and assessed at a value greater than its actual value for the year 1941.

PETITION

Now comes petitioner and respectfully alleges and shows:

I

That petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

II

That the United States of America was, on the 1st day of [fol. 2] May, 1941, and for many years prior thereto, and now is, the owner of a certain tract or parcel of land situate, lying, and being in the City of Saint Paul, County of Ramsey, and State of Minnesota, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabashaw streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabashaw street and one hundred and sixty (160) feet on Fifth Street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

that said real estate is described on the Tax Rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South

one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, and is assessed to S. R. A. Incorporated subject to fee title re-
[fol. 3] maining in the United States of America.

III

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A", and made a part hereof by reference.

IV

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B", and made a part hereof by reference.

V

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by tele-
[fol. 4] gram dated April 21, 1939, true and correct copy of said acceptance being attached hereto, marked Exhibit "C", and made a part hereof by reference.

VI

That petitioner has paid only the sums required to be paid to the Treasurer of the United States under the terms of said contract of purchase and sale, and that petitioner is not now and was not on May 1, 1941, entitled to receive from the United States of America, through the Director of Procurement, a quit claim deed conveying title to the property above described.

VII

That the title to all of the premises above described was at all times herein mentioned and now is in the United States

of America, and that the same premises are exempt from taxation by the State of Minnesota or by the County of Ramsey.

VIII

That said real estate so hereinbefore described was valued by the assessing officers of Ramsey County as of May 1, 1941, in the sum of Two Hundred Seventy-seven Thousand [fol. 5] Six Hundred Dollars ($277,600.00), its classified value being put upon the assessment lists at One Hundred Eleven Thousand and Forty Dollars ($111,040.00), to which was applied the tax rate of one hundred two and seven tenths (102.7) mills, resulting in the tax in the sum of Eleven Thousand Four Hundred Thirty-one and 78/100 Dollars ($11,431.78).

IX

That said real estate has been partially, unfairly, and unequally assessed, and has been assessed at a value greater than its real or actual value.

Wherefore, Petitioner prays for an order of the within Court:

1. Determining that the title to the premises herein described is in the United States of America, and that the same are exempt from taxation by the State of Minnesota or the County of Ramsey;

2. Reducing the full and true value of said premises to the actual value thereof;

3. For such other and further relief as may to the Court seem just and proper; and

4. For its costs and disbursements herein.

Dated: This 7th day of May, 1942.

S. R. A. Incorporated, by R. E. Albrecht, President, Petitioner.

[fol. 6] *Duly sworn to by R. E. Albrecht. Jurat omitted in printing.*

[fols. 7-16] Exhibit "A" omitted. Printed side page. 8 ante.

[fols. 17-18] Exhibit "B" omitted. Printed side page. 19 ante.

[fol. 19] Exhibit "C" omitted. Printed side page. 21 ante.

[fol. 20] In District Court of Ramsey County

Amended Petition

Now comes petitioner and respectfully alleges and shows:

I

That petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

[fol. 21] II

That the United States of America was, on the 1st day of May, 1941, and for many years prior thereto, and now is, the owner of a certain tract or parcel of land situate, lying and being in the City of Saint Paul, County of Ramsey, and State of Minnesota, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabashaw Streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabashaw street and one hundred and sixty (160) feet on Fifth Street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

that said real estate is described on the Tax Rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South [fol. 22] one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, and is assessed to S. R. A. Incorporated subject to fee title remaining in the United States of America.

III

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A", and make a part hereof by reference.

IV

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B" and made a part hereof by reference.

V

[fol. 23] That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C" and made a part hereof by reference.

VI

That petitioner has paid to the Treasurer of the United States under the terms of the said contract of purchase the sum of Six Thousand Fifty-five and 05/100 Dollars ($6,055.05) as of May 26, 1939, the further sum of six Thousand Fifty-five and 05/100 Dollars ($6,055.05) with interest thereon at the rate of four percent (4%) per annum as of the 26th day of February, 1940, and the further sum of Nine Thousand Five Hundred Dollars ($9,500.00) as of the 26th day of May, 1940, which said last payment included

interest on the unpaid balance of the purchase price at the rate of four percent (4%) per annum from the 26th day of May, 1939 which interest amounted to Four Thousand Three Hundred Fifty Nine and 64/100 Dollars ($4,359.64) leaving a balance of Five Thousand One Hundred Forty and 36/100 Dollars ($5,140.36) which was applied on the unpaid balance of the purchase price; that there was due and owing to the United States of America on the 1st day of May, 1941 the sum of One Hundred Three Thousand [fol. 24] Eight Hundred Fifty and 54/100 Dollars ($103,850.54).

VII

That the title to all of the premises above described was at all times herein mentioned and now is the United States of America, and that the said premises are immune and exempt from taxation by the State of Minnesota or by the County of Ramsey under and by virtue of Article 4, Section 3 of the Constitution of the United States and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3rd day of March, 1849 and by virtue of the Act of Congress authorizing a state government for the territory of Minnesota, adopted by the Congress of the United States on the 26th day of February, 1857, and by virtue of Article 2, Section 3 of the Constitution of the State of Minnesota and by virtue of Sections 1977 and 1979 Mason's Minnesota Statutes (Minnesota Statutes 1941, Section 272.03).

VIII

Notwithstanding that said property is exempt and immune from taxation by the State of Minnesota or the County of Ramsey the said real estate so hereinbefore described was valued by the assessing officers of Ramsey County as of [fol. 25] May 1, 1941 in the sum of Two Hundred Seventy Seven Thousand Six Hundred Dollars ($277,600.00), its classified value being put upon the assessment lists at One Hundred Eleven Thousand Forty Dollars ($111,040.00), to which was applied the tax rate of one hundred two and seven tenths (102.7) mills, resulting in a tax in the sum of Eleven Thousand Four Hundred Thirty One and 78/100 Dollars ($11,431.78).

IX

That the property above described was assessed and taxed on the records of Ramsey County, Minnesota "subject to fee title remaining in the United States of America"; that no authority exists by statute or otherwise to levy and assess a tax upon an interest in real estate in the State of Minnesota other than the whole interest therein.

X

That the action of the County of Ramsey and State of Minnesota in levying a tax upon said premises deprives this petitioner of a privilege and immunity secured to it under the Constitution of the United States; deprives it of property without due process of law and denies to it the equal [fol. 26] protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

XI

That said real estate has been partially, unfairly, and unequally assessed, and has been assessed at a value greater than its real or actual value.

Wherefore, Petitioner prays for an order of the within Court:

1. Determining that the title to the premises herein described is in the United States of America, and that the same are immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the purchase price therefor is paid in full to the United States and the petitioner is entitled to a conveyance from the United States.

2. Reducing the full and true value of said premises to the actual value thereof;

3. For such other and further relief as may to the Court seem just and proper; and

4. For its costs and disbursements herein.

Dated: This 7 day of May, 1944.

S. R. A. Incorporated, by R. E. Albrecht, President, Petitioner.

[fol. 27] *Duly sworn to by Robert E. Albrecht. Jurat omitted in printing.*

(Exhibits A, B and C attached to this amended petition are identical with Exhibits A, B and C attached to original petition at folios 8 to 21 of this record.)

[fol. 28] In District Court of Ramsey County

Stipulation of Facts

It Is Stipulated by and between the undersigned, the attorneys for the respective parties hereto:

I

That S. R. A. Incorporated is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and is the petitioner in the above entitled cause.

II

That the premises which are subject of the above entitled petition are described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867 in Book P. [fol. 29] P. of Deeds, page 65, 66 & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

and are situate in the City of Saint Paul, County of Ramsey, and State of Minnesota, at the intersection of Fifth and Wabasha Streets in said City; that the real estate is described on the tax rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105)

feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota.

III

That for tax purposes the premises so described are assessed upon the records of Ramsey County, Minnesota, to S. R. A. Incorporated "subject to fee title remaining in the *United* States of America."

IV

That the premises above described were acquired by the United States of America by deed from various parties in the year 1867, and that the legal title to the said premises is [fol. 30] now and ever since 1867 has been in the United States of America, save as the same may have been affected by the transactions with S. R. A. Incorporated as hereinafter set forth:

That in or about the year 1870 a building was erected upon the above described premises by the United States of America, and for many years thereafter the premises were occupied by the United States of America as a post office and as an office for various departments of the United States, including the Department of Internal Revenue; that for some years prior to the 1st day of April, 1939, neither the building on the premises nor any portion of the premises had been occupied by the United States of America or by any other person whatsoever.

V

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A" and made a part hereof by reference.

[fol. 31]

VI

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement De-

partment, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B" and made a part hereof by reference.

VII

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C" and made a part hereof by reference.

VIII

That subsequent to the 26th day of May, 1939, the building which had been erected upon the premises by the United States of America was razed, demolished, and destroyed by S. R. A. Incorporated; that subsequent thereto and prior to the 1st day of May, 1940, a building had been erected upon said premises by S. R. A. Incorporated; that on the 1st day [fol. 32] of May, 1940, stores in said building had been leased by S. R. A. Incorporated to various tenants, and the balance of the premises not covered by the building had been leased for automobile parking purposes, and that all of said premises on May 1, 1940, was used for purposes of a commercial nature, and no part or portion thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

IX

That S. R. A. Incorporated has paid to the United States of America the payment accompanying the proposal of April 17, 1939, of $5,755.05; the payment accompanying the supplemental proposal of April 21, 1939 of $300.00; the payment due February 26, 1940 of $6,055.05, with interest thereon at 4% per annum; and the further payment of $9,560.00 due May 26, 1940, which said last payment included interest on the unpaid balance of the purchase price at the rate of 4% per annum from the 26th day of May, 1939, which interest amounted to $4,359.64, leaving a balance of $5,140.36 which was applied on the unpaid balance of the purchase price; that on May 1, 1941 no other payments

had been made to the United States of America and there was then due and owing to the United States of America the sum of $103,850.84.

[fol. 33]

X

For the purpose of determining the issue here submitted and without prejudice to any other issue, it is stipulated that the property in question was assessed and taxed as all other real property in the County and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; that the tax records of said Ramsey County, Minnesota, of taxes levied and assessed for the year 1941 were duly certified on January 6, 1942 by Eugene A. Monick, County Auditor of said Ramsey County, including the property in question, to be a correct list of the taxes levied upon the real property in said County of Ramsey for the year 1941; and that on said last mentioned date Elsa M. Obst duly certified that she received the said tax records from the said County Auditor; and that said tax records contained the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of "S. R. A. Incorporated (subject to the fee title remaining in the United States of America)"; description of property; the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota; [fol. 34] assessed valuation $111,040; general tax $11,431.78; total general tax $11,431.78; and that said tax records have been in the possession of the said County Treasurer for the collection of said taxes ever since said last mentioned date. That the tax rate applicable to the property in question for the year 1941 was 102.7 mills upon the assessed valuation.

XI

That it is agreed that for the purpose of this litigation the full and true value of the premises described in Paragraph II hereof as of May 1, 1941 was $225,000.00; that such valuation of $225,000.00 is the full and true value without deduction of any amount on account of the balance remaining

due on May 1, 1941 to the United States of America under the contract hereinbefore described.

DATED: This 11th day of April, 1944.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for County of Ramsey and State of Minnesota. Otis, Fariey & Burger, Attorneys for Petitioner.

[fol. 35] (Exhibits A, B, and C attached to this stipulation are identical with Exhibits A, B, and C attached to original petition at folios 8 to 21 of this record.)

In District Court of Ramsey County

Findings of Fact and Conclusions of Law

The above entitled matter came on regularly for trial before the undersigned, one of the Judges of the above named court, on the 12th day of April, 1944, pursuant to a petition to review the taxes for the year 1941 as provided by Minnesota Statutes, 1941, Section 278.01 (Mason's 1940 Supplement, Section 2126-1). The State of Minnesota was represented by James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney; the petitioner, S. R. A. Incorporated, was represented by Roland J. Fariey, its attorney.

The parties having stipulated to the facts and the Court having heard counsel and being fully advised in the premises, makes the following:

[fol. 36] Findings of Fact

I

That S. R. A. Incorporated is a corporation duly organized and existing under the laws of the State of Minnesota.

II

That the description of the premises in question is, the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also South one hundred five (105) feet

of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, also known as Original Town of Saint Paul, which premises are situate in the City of Saint Paul in said County and State on the Northwest corner of 5th and Wabasha Street in said City.

III:

That the legal title to said premises has been in the United States of America since 1867; that since 1879 the said premises have been improved and were occupied by various departments of the government of the United States and particularly by the Department of Internal Revenue; that for some years prior to 1939 the premises were vacated and were not used or required for governmental purposes; and [fol. 37] that pursuant to Act of Congress the said property was declared by the Treasury Department of the United States to be in excess of its needs and was offered for sale.

IV

That on or about the 26th day of May, 1939, a contract for deed was entered into between S. R. A. Incorporated, and the United States of America under the terms of which the petitioner, S. R. A. Incorporated, agreed to pay to the United States of America as the purchase price of said premises, the sum of One Hundred Twenty-one Thousand, One Hundred one-Dollars ($121,101.00) upon terms particularly set forth in the stipulation of the parties hereto, requiring payments in installments for a period of ten years and until May 26, 1949; and the United States of America agreed that when the total purchase price had been paid as provided, and the terms and conditions of the contract for deed had been complied with; to deliver to S. R. A. Incorporated, or its nominee, a quit claim deed to the premises and to deliver to it a marketable title, free of all encumbrances except such as may have accrued against the petitioner's interest in the property subsequent to May 26, 1939; that under the terms of the same contract S. R. A. Incorporated was entitled to take immediate possession of the premises, to sell, [fol. 38] assign or lease any part or all of said premises without the approval of the United States of America, but subordinate to the interests of the United States, to obtain a deed to portions of the premises less than the whole upon advance payment of a portion of the purchase price to be

determined by the United States of America; and that said contract is still in full force and effect.

There remained unpaid under said contract on May 1, 1941 the sum of $103,850.84.

V

That subsequent to the 26th day of May, 1939 and prior to the 1st day of May, 1941 the petitioner, S. R. A. Incorporated, took possession of said property, razed, demolished and destroyed the building and improvements on said premises and erected thereon a new building, consisting of a number of stores, which on the 1st day of May, 1941, were and still are leased by the said petitioner to various tenants; the remainder of the premises, not covered by the building, were and still are leased to another tenant for automobile parking purposes; and that all of said premises on May 1, 1941 were and still are used for the private commercial purposes of S. R. A. Incorporated, and no part thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

[fol. 39]

VI

The property in question was assessed and taxed as all other real property in the said county and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; and that the tax records of said Ramsey County for the year 1941 contain the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of S. R. A. Incorporated (but subject to the fee title remaining in the United States of America)" description of property: "the East Ten (10) feet of the South One Hundred five (105) feet of Lot Nine (9) also the South One hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota; that it was agreed between the parties hereto that the true and full value of said premises on the first day of May, 1941, was the sum of $225,000.00, without deduction of any amount on account of the balance remaining due to the United States of America under the contract hereinbefore described; that the assessed

value of said premises on said last mentioned date was the sum of $90,000.00; and that the tax rate for said year was 102.7 mills, resulting in a tax upon said premises for the [fol. 40] year 1941 in the sum of $9,243.00, in addition to an assessment for street sprinkling in the sum of $27.97, being a total of $9,270.97.

CONCLUSIONS OF LAW

I

That the assessment of the said property was duly made in accordance with the statutes of the State of Minnesota and was assessed and taxed as all other real property in said Ramsey County and upon the same rates as other like property.

II

That the petitioner, S. R. A. Incorporated, has, and on May 1, 1941, had, the equitable title to the said property, and that the United States of America has, and on said last mentioned date, had the legal title thereto in trust for said petitioner as security for payment of the balance of the purchase price.

III

That said premises are not now and on May 1, 1941 were not immune or exempt from taxation by the State of Minnesota.

[fol. 41]

IV

That the State of Minnesota is entitled to judgment against the property described as follows: The East Ten (10) feet of the South One Hundred five (105) feet of Lot Nine (9), also the South One hundred five (105) feet of Lot Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, which addition is sometimes referred to as the Original Town of Saint Paul, for taxes for the year 1941 in the sum of $9,270.97, which amount is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim or lien, of whatever nature, in law or equity, of every person, company, or corporation, subject however, to the prior rights, liens and interests of the United States of America; and that unless such amount be paid, the land hereinbefore described

shall be sold, as provided by law, to satisfy the amount to which it is liable, subject however, to the prior rights, liens and interests of the United States of America.

Let Judgment be entered accordingly.

Dated at St. Paul, Minnesota, this 14th day of April, 1944.
J. C. Michael, Judge of District Court.

A stay of 20 days is hereby granted.
Michael, J., Judge of District Court.

[fol. 42] IN DISTRICT COURT OF RAMSEY COUNTY

JUDGMENT—Filed May 8, 1944

The above entitled matter having been heard before the Honorable James C. Michael, one of the Judges of the above named court, on the 12th day of April, 1944 pursuant to a petition filed by S. R. A. Incorporated, a corporation, to review the taxes for the year 1941 as provided by Minnesota Statutes 1941, Section 278.01 (Mason's 1940 Supplement, Sec. 2126-1), resulting in the filing of findings of fact and conclusions of law herein directing the entry of judgment in favor of the State of Minnesota.

NOW THEREFORE,

IT IS HEREBY ADJUDGED, That the parcel of land hereinafter described, is liable for taxes to the amount set opposite the same, as follows:

Description	*Amount*
The East Ten (10) feet of the South One Hundred five (105) feet of Lot Nine (9), also the South One hundred five (105) feet of Lots Ten (10) Eleven (11) and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, which addition is sometimes referred to as the Original Town of Saint Paul	$9,270.97

[fol. 43] The amount of taxes to which, as hereinbefore stated such parcel of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or

equity, or every person, company, or corporation, subject however to the prior rights, liens and interests of the United States of America; and It Is Adjudged that, unless the amount to which such parcel is liable be paid, such parcel be sold, as provided by law, to satisfy the amount to which it is liable, subject however, to the prior rights, liens, and interests of the United States of America.

Dated this 8th day of May, 1944.

J. J. Fitzgerald, Clerk of the District Court, County of Ramsey. (Seal.)

[File endorsement omitted.]

[fol. 44] In District Court of Ramsey County

Notice of Appeal to Supreme Court of State of Minnesota

To James F. Lynch, County Attorney and Andrew R. Bratter, Assistant County Attorney, attorneys for the County of Ramsey and State of Minnesota, and to J. J. Fitzgerald, Clerk of the aforesaid Court:

Take Notice that the petitioner, S. R. A. Incorporated appeals to the Supreme Court of the State of Minnesota from the judgment and the whole thereof, entered herein on May 8, 1944.

Otis, Farley & Burger, Attorneys for Petitioner, W-1862 First Nat'l. Bank Bldg., St. Paul, Minnesota.

[fols. 45-57] Opinion in Case No. 33270 omitted. Printed side page. 62, ante.

[fols. 58-81] Opinion in Case No. 33952 omitted. Printed side page. 120, ante.

[fol. 82] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

In re Petition of S. R. A., Inc. to have determined its claim that the property herein described is exempt from taxation, etc., for 1941.

33953

OPINION—Filed April 13, 1945

MATSON, *Justice:*

This case, pertaining to the 1941 tax assessment, is a companion to In re Petition of S. R. A., Inc., —— Minn. ——, 18 N. W. (2d) 442, pertaining to the 1940 tax assessment, opinion in which is filed herewith. For the reasons stated in the aforesaid opinion, the decision in In re Petition of S. R. A., Inc., 213 Minn. 487, 7 N. W. (2d) 484, is controlling, and the judgment appealed from is affirmed.

Affirmed.

Leroy E. Matson.

[fol. 83] IN SUPREME COURT OF MINNESOTA

In the Matter of the Petition of S. R. A., Incorporated, a corporation, to have determined its claim that the property herein described is exempt from taxation and that the same was partially, unfairly and unequally assessed, and assessed at a value greater than its actual value for the year 1941

33953

S. R. A., INC., Appellant,

vs.

STATE OF MINNESOTA, Respondent

JUDGMENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Ramsey be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Twenty-Five and No/100 Dollars ($25.00) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed April 24, 1945:

By the Court.

Attest:

Grace Kaercher Davis, Clerk.

[fol. 83a] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 84] In Supreme Court of Minnesota

No. 33953

[Title omitted]

Stipulation as to Record—Filed June 18, 1945

Upon the proposed petition of the appellant to the Supreme Court of the United States for writ of certiorari to the Supreme Court of Minnesota, it is stipulated that the record to be certified to the Supreme Court of the United States by the Clerk of the Supreme Court of Minnesota, shall consist of:

1. The record filed by appellant of the proceedings in the District Court of Ramsey County, Minnesota in this cause before the Supreme Court of the State of Minnesota.

2. The opinion of the Supreme Court of the State of Minnesota in cause No. 33270 before that Court, dated December 24, 1942.

3. The opinion of the Supreme Court of the State of Minnesota in cause No. 33952 before that Court, dated April 13, 1945.

4. The opinion of the Supreme Court of Minnesota in this cause dated April 13, 1945.

[fol. 85] 5. The judgment of the Supreme Court of Minnesota in this cause.

6. This stipulation.

Otis Faricy & Burger, Attorneys for Appellant; James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney; J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Deputy Attorney General, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 86] Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

Nos. —

In the Matter of the Petition of S. R. A. INCORPORATED, ETC.

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITIONS FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing petitions for certiorari in the above-entitled causes be, and the same is hereby, extended to and including July 24th, 1945.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 13 day of July, 1945.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 254

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 255

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

FILE COPY

Supreme Court, U. S.
FILED
OCT 24 1945
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM 1945

No. 254

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1940 TAX)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

ROLAND J. FARICY,
W-1862 First Natl. Bk. Bldg.,
Saint Paul, Minnesota,
Attorney for Petitioner.

OTIS, FARICY & BURGER
W-1862 First Natl. Bk. Bldg.
Saint Paul, Minnesota
of Counsel

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Supreme Court of the United States

OCTOBER TERM 1945

No.....

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1940 TAX)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, S.R. A. INCORPORATED, a Minnesota Corporation, hereby petitions for review, upon writ of certiorari, of the decision and judgment of the Supreme Court of Minnesota, being the court of last resort of that State, and respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED

This is a petition by S. R. A. INCORPORATED, a Corporation under the laws of Minnesota, to determine that the title to certain real property in Ramsey County, Minnesota, being purchased by it under contract for deed with

the United States; was in the United States of America on May 1, 1940, and that the same was immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the purchase price for said property had been paid in full to the United States and until the petitioner was entitled to a conveyance from the United States. The tax year here involved is the year 1940.

The case was tried upon a stipulation of facts. From this stipulation (R. 42-47) and the findings based thereon, (R. 47-51), it appears that S. R. A. INCORPORATED is a Minnesota Corporation; that the property in question is located in Ramsey County, Minnesota and was acquired by the United States in 1867 and improved by it in 1870 (R. 44); that the premises and the building thereon for many years thereafter were occupied by the United States Government as a post office and as an office for various departments of the government, including the Department of Internal Revenue (R. 44); that in 1939 the United States sold to the petitioner the premises involved under contract for deed, under the terms of which the United States agreed to deliver to petitioner a deed to said premises when the total purchase price had been paid as provided and the terms and conditions of the contract for deed had been complied with (R. 4-11); that the contract was on May 1, 1940, and still is in full force and effect (R. 45).

Prior to May 1, 1940, the petitioner took possession of the premises, as it was entitled to do under the terms of the contract, razed the building thereon, constructed a new building on part thereof, which is leased to various tenants, and leased the remainder of the property for a parking lot (R. 45). On May 1, 1940, the premises were used for com-

mercial purposes, appellant collecting and retaining rents, and no part was used by the United States (R. 45). On May 1, 1940, there was still due and owing to the United States under the contract for deed $108,990.90, and appellant was not entitled to a deed (R. 45). On May 1, 1940, the County of Ramsey, State of Minnesota, assessed and levied a tax against the said premises "subject to fee title remaining in the United States of America" in the sum of $11,129.75, based upon a valuation of $277,600.00 (R. 15 and 46). The assessment of this tax was contested by the petitioner, the original petition alleging that the title to the premises was in the United States and that the premises were exempt from taxation, and on the further ground that the valuation was excessive (R. 1-11).

The matter originally came on for trial before the court of first instance (District Court of Ramsey County, Minnesota) on November 28, 1941 (R. 16). It was stipulated by the parties that only the question of immunity of the premises from taxation was submitted to the court (R. 15). The court of first instance found that the premises were immune from taxation upon the ground that they constitute property of the United States, and findings of fact, conclusions of law, and order for judgment to that effect were entered (R. 16-21). A motion by the State for amended findings or for a new trial was denied by the lower court (R. 22-26). The State appealed from that order to the Supreme Court of the State of Minnesota (R. 26) and by the decision of that Court dated December 24, 1942 (R. 27-38 and reported in 213 Minn. Reports 487 (7 N. W. 2nd 484) the order of the lower court was reversed.

The cause again came on for trial upon all issues on April 12, 1944 (R. 47), at which time the court of first instance permitted the amended petition (R. 38-42) to be filed by petitioner. Thereafter and at the time of the trial the parties stipulated that for the purposes of this litigation the full and true value of the premises as of May 1, 1940 was $225,000.00 without deduction of any amount on account of the balance remaining due under the contract for deed (R. 46). All other facts were stipulated (R. 42-47). The Court found that the premises were not immune from taxation, overruled the objections, held the assessment valid and rendered judgment on May 8, 1944, in favor of the State and adjudged the premises here involved liable for taxes for the year 1940 in the sum of $9,026.17 (R. 47-52). Upon appeal to the Supreme Court of Minnesota, this judgment was affirmed by decision filed April 13, 1945 (R. 52-74), and judgment entered April 24, 1945 (R. 74).

A petition for writ of certiorari is also filed in this Court at this time to review the judgment of the Supreme Court of Minnesota in a companion case involving the taxes assessed against the same premises for the year 1941 (R. 93-94). The printed record combines the records in the two cases.

The position of S. R. A. INCORPORATED was and is that the property in question was not subject to taxation by the State of Minnesota in the year involved (1940); that the property was immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the petitioner was entitled to a deed from the United States under the terms of its contract with the United States; that the

"equity" of petitioner was not subject to taxation by the State; and that if the equity was subject to taxation the State erroneously included the value of the interest of the United States in its valuation of the premises.

BASIS OF JURISDICTION.

A review of the judgment is plainly within the jurisdiction of this court under Section 237 (b) of the Judicial Code (28 U. S. C. Section 344) authorizing such review:

> "Where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

The matter was heard by the Court of first instance upon the petition of S. R. A. INCORPORATED and upon stipulated facts (R. 42-47).

This is a special statutory proceeding and no separate answer was required or interposed by the State and therefore the pleadings did not designate the statute under which the right to impose the tax was asserted.

The original petition of S. R. A. INCORPORATED (filed in the District Court) alleges that the title to the premises is in the United States and that the premises are exempt from State taxation (R. 3). The amended petition alleges that the levy and assessment of the tax deprives the petitioner of a privilege and immunity secured to it under the Constitution of the United States and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849,

and by virtue of the Act of Congress authorizing a state government for the territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857, and is in violation of petitioner's rights under the due process and equal protection clauses of the Federal Constitution, without conjecture as to the statute under which the State had assumed to impose the tax (R. 40-41).

This position was advanced and adhered to on each appeal to the State Supreme Court, where the same constitutional objections to the tax were raised by assignments of error and argument. In the circumstances, the procedure available to S. R. A. INCORPORATED appears to be by application for certiorari rather than appeal. Memphis Natural Gas Co. v. Beeler, 315 U. S. 649 (62 Sup. Ct. Rep. 857).

The court of first instance in its original findings of fact and conclusions of law found the premises to be immune from taxation upon the ground that they constitute property of the United States (R. 20-22). Upon appeal the Supreme Court of Minnesota reversed the order of the lower court by decision entered December 24, 1942 (R. 27-38).

The original decision of the Supreme Court of Minnesota entered December 24, 1942 (R. 27-38) was not a final judgment and was not subject to review by the Supreme Court of the United States. Fox Film Corporation v. Muller (Certiorari granted) 293 U. S. 550, 55 Sup. Ct. Rep. 213 (Writ dismissed) 294 U. S. 696, 55 Sup. Ct. Rep. 444. See later opinion 296 U. S. 207, 56 Sup. Ct. Rep. 183, also Beaupre v. Noyes, 138 U. S. 397, 11 Sup. Ct. Rep. 296.

The case was again tried to the court of first instance on April 12, 1944, and that court found that the premises were not immune from but were subject to state taxation (R. 47-

51) and by judgment entered May 8, 1944, adjudged the premises here involved "subject to fee title remaining in the United States of America" liable for taxes in the year 1940 in the sum of $9,626.17 (R. 51-52). Upon appeal that judgment was affirmed by the Supreme Court of Minnesota by opinion dated April 13, 1945 (R. 52-74) and by judgment entered April 24, 1945 (R. 74). The judgment sought to be reviewed is that entered April 24, 1945, in the Supreme Court of the State of Minnesota.

The decision of December 24, 1942 (R. 27-38) is reported in 213 Minnesota Reports at page 487; the decision of April 13, 1945 (R. 52-74) is reported in 18 N. W. (2d) 442 but has not yet appeared in the Minnesota Reports.

The filing of this petition is timely since the time for filing was extended to July 24, 1945, by order of this Court dated July 13, 1945.

QUESTIONS PRESENTED

The ultimate questions thus presented are whether the enforcement of the tax as levied would deprive S. R. A. (the petitioner) of its property without due process of law or deny it the equal protection of the laws in violation of Article XIV, Section 1 of the Amendments to the Constitution of the United States or would operate to subject to taxation property of the United States which is immune from taxation under the decisions of this court and contrary to the provisions of Article IV, Section 3 of the United States Constitution and contrary to the provisions of the Organic Act of Minnesota and of the Enabling Act of Congress authorizing the Minnesota State government and of the Constitution of the State of Minnesota.

Specifically, the questions presented are as follows:

1. Where land owned by the United States of America is sold by it under an installment contract for deed, may the State of Minnesota tax such land as real estate prior to such compliance by the purchaser with the contract as will entitle him to a deed?

2. May such land be taxed by the State "subject to fee title remaining in the United States of America?"

3. May the interest of the United States in the premises (assuming non-exemption) be included in determining the value of the property for tax purposes?

REASONS FOR GRANTING OF WRIT

1. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is not in accord with the applicable decisions of this Court as expressed in Kansas Pacific Ry. Co. v. Prescott, 16 Wall. 603, 21 L. Ed. 373, Union Pacific Railroad Co. v. McShane, 22 Wall. 444, 22 L. Ed. 747, Northern Pacific Ry. Co. v. Rockne, 115 U. S. 600, 29 L. Ed. 477, 6 Sup. Ct. Rep. 201, Irwin v. Wright, 258 U. S. 219, 66 L. Ed. 573, 42 Sup. Ct. Rep. 293, U. S. v. Allegheny Co., 322 U. S. 174, 64 Sup. Ct. Rep. 908.

2. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is not in accord with the decision of the Ninth Circuit Court of Appeals in Lincoln County v. Pacific Spruce Corporation, 26 Fed. 2d 435, and not in accord with the decision of the Fifth Circuit Court of Appeals in Ken Realty Co. v. Johnson, 138 Fed. 2d 809.

3. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is not in accord with the decisions of the highest courts of other states as expressed in Mint Realty Co. v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130, Copp v. State, 90 W. Va. 444, 71 S. E. 580, People v. Burke, 142 N. E. 320 affirming 198 N. Y. S. 601, and of intermediate State Courts of Appeal as expressed in People v. Burke, 226 N. Y. S. 882 affirming 217 N. Y. S. 803, and A. B. R. Corporation v. City of Newark, 35 Atl. 2d (N. J.) 473.

4. The matter here presented is of grave importance to petitioner, of course. But it is also of importance to the United States and to the States of the Union. Vast land

areas have been acquired of late years by the United States and at the close of the war, large portions of these areas may be sold to purchasers under contracts such as that here involved. The question of taxation is of vital importance for on the one hand if the premises are non-taxable, the price at which the lands may be sold will be much greater while on the other hand if taxable, the revenues accruing to the respective states will be increased as the premises are sold.

5. Under Article IV, Section 3 of the United States Constitution, Congress has power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. To tax property, the title to which is in the United States, and before the purchaser under contract for deed is entitled to a conveyance, is a direct interference by the State with this power.

The Organic Act of Minnesota, the Enabling Act and the Constitution of Minnesota all provide that no tax shall be imposed upon lands belonging to the United States, and the tax herein sought to be levied and assessed is contrary to the provisions thereof.

ASSIGNMENTS OF ERROR

The Supreme Court of Minnesota erred:

1. In affirming the judgment of the District Court of Ramsey County, Minnesota, dated May 8, 1944.

2. In holding the tax valid.

3. In holding that the property here involved was subject to taxation by the State of Minnesota "subject to fee title remaining in the United States of America."

4. In refusing to hold that the tax was a violation of Article IV, Section 3 of the Constitution of the United States.

5. In refusing to hold that the tax was a violation of Section 1 of Article XIV of the amendments to the Constitution of the United States.

6. In refusing to hold that the tax was a violation of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849.

7. In refusing to hold that the tax was a violation of the act of Congress authorizing a state government for the Territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857.

8. In refusing to hold that the questions here involved were Federal questions and not controlled by the law of any state under Article VI, Paragraph 2 (the Supremacy clause) of the Constitution of the United States.

9. In refusing to hold that the tax was a violation of Article 2, Section 3 of the Constitution of the State of Minnesota and therefore deprived the petitioner of his property without due process and denied it the equal protection of the law under Section 1, Article XIV of the amendments to the U. S. Constitution.

10. In holding that the petitioner is not in a position to assert the United States tax immunity.

11. In holding that the interests of vendor and vendee in real estate in Minnesota are separable for the purposes of real estate taxation.

12. In refusing to hold that the building on the premises was taxable as personal property under Section 272.03 of Minnesota Statutes (1941).

13. In basing its decision in part upon the fact that the premises here involved are used for commercial purposes.

14. In holding that a tax levy upon the vendees equitable interest is not directly or indirectly a tax upon the vendors legal estate.

15. In holding that the State of Minnesota may levy a tax upon a limited interest or estate in real property and, upon default, hold a tax sale of such limited interest or estate, subject to and without impairing the outstanding superior lien or other estate.

16 In holding that the doctrine of the federal land-grant cases has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign.

ARGUMENT

I.

Enforcement of the tax in question would deprive S. R. A. INCORPORATED of its property without due process of law and deny it the equal protection of the law.

The decision of the Supreme Court of Minnesota is in conflict with the applicable decisions of this court and of the decisions of other federal and state courts respecting the taxation of property sold under contract, the legal title to which is in the United States prior to the time the contract has been so far performed as to entitle the purchaser to a deed.

In the State Court decisions in Mint Realty Co. v. Philadelphia, 218 Pa. St. 104 (66 Atl. 1130), Copp v. State, 90 W. Va. 444 (71 S. E. 580), A. B. R. Corporation v. City of Newark, 35 Atl. 2d (N. J.) 473, People v. Burke (both cases), 142 N. E. (N. Y.) 320 and 222 N. Y. S. 882, in the decision of the Circuit Court of Appeals for the Ninth Circuit in Lincoln v. Pacific Spruce Corporation, 26 Fed. 2nd 435, and in the U. S. District Court decision in U. S. v. City of Milwaukee, 100 Fed. 828, the precise situation to be considered in this case was presented and in each case it was held that the land in question was not subject to taxation so long as legal title remained in the United States until all conditions required to be performed by the purchaser, including full payment of the purchase price, had in fact been performed. The decisions of the United States Supreme Court in Kansas Pacific Railway vs. Prescott, 16 Wall. 603, 21 L. Ed. 373; Union Pacific Railroad Co. vs.

McShane, 22 Wall. 444, 22 L. Ed. 747; Northern Pacific Railway Co. vs. Rockne, 115 U. S. 600, 29 L. Ed. 477, 6 Sup. Ct. Rep., and Irwin vs. Wright, 258 U. S. 219, 6 L. Ed. 573, 42 Sup. Ct. Rep. 293, while relating to disposition of Federal lands by grant to railroads or to homesteaders embody the same principles of law and are strictly analogous to the case here presented for review. The attempt on the part of the Supreme Court of Minnesota to distinguish these decisions on the ground that the disposition here is by contract for deed, is based upon no authority, and is not convincing. We respectfully submit that the same principle of law should be applied in both instances. Until the first Minnesota decisions involved in this proceeding, no contrary opinion had ever been written by a court of final jurisdiction. The point was settled insofar as it is possible for a point to be settled by case law. In the case of Ken Realty Company v. Johnson, 138 Fed. 2nd 809, the Fifth Circuit Court of Appeals in an almost identical case held that the purchaser under such a contract as is involved in this proceeding which reserved title in the United States had an interest subject to taxation under Alabama laws, the value of the interest being measured each tax year by the value of the whole property, diminished by the amount of the unpaid purchase money.

The decisions by the Supreme Court of Minnesota here being considered rest upon two bases—first: that the interests of S. R. A. and of the United States in the premises involved were, for the purpose of taxation, separable, and second: that S. R. A. could not assert the immunity. This Court in the case of U. S. v. Allegheny County, 322 U. S. 174, 64 Sup. Ct. Rep. 908, reached an opposite conclusion on

each point. In addition, this Court in that case determined that the titles or liens created by such a contract for deed as is here in issue was a question of federal law not controlled by the law of any state.

Of course, the vendee under the contract for deed has an interest in the land, call it an "equity," or an "equitable interest", or an "equitable title". The vendee has a property right which is entitled to protection and which may be conveyed, but that interest or right is only pro tanto and full or perfect equitable title only matures upon performance by the vendee of the conditions of the contract, such as payment in full of the purchase price.

Here the State has attempted to tax the real estate "subject to fee title remaining in the United States of America." This Court has ruled directly that the equity of the vendee may not be assessed and taxed. In the case of Irwin v. Wright, 258 U. S. 219, 66 L. Ed. 573, 64 Sup. Ct. Rep. 908, Irwin was a homestead entryman under the Homestead Act and the Reclamation Act of land in Arizona. He had not fulfilled any of the conditions required by him to be performed before a patent would issue. The State of Arizona attempted to tax the equity of Irwin in the premises. This court held such equity was not taxable.

In Lincoln County v. Pacific Spruce Corporation (supra) the court held that the purchaser had no such interest in the property that was subject to taxation by the county because of title reserved by the United States Spruce Corporation, holding that if the government had parted with everything except the naked legal title, the property was subject to taxation; otherwise it was not. These two decisions would seem to be controlling as a matter of federal law.

The same result was reached by the Pennsylvania Supreme Court in Mint Realty Company v. Philadelphia (supra) and by the New York Supreme Court in People v. Burke (supra).

In the instant case the State contends, and the Supreme Court of Minnesota determined that it was the property of S. R. A. that was being taxed, not that of the United States.

In determining the value of the land for the purposes of taxation, the value of all interests was embraced, including the interest of the United States. The property in question was assessed and taxed as all other real property in the County and without deduction of any amount due the United States under the contract for deed.

We call particular attention to the conclusion reached by this Court in the case of U. S. v. Allegheny County, that the same result was reached by including the value of the machinery owned by the Government in the assessment of the land as would have been reached if the machinery were taxed in form and the substance of the procedure was to lay an ad valorem general property tax on property owned by the United States. If the power to tax be assumed, the inclusion of the interest of the United States in determining the value for tax purposes is clearly erroneous.

The Supreme Court of Minnesota in its first opinion recognized that in Minnesota proceedings to enforce real estate taxes are in rem, that real estate taxes are assessed against the land itself and that they are not against the person owning the property or his estate. In its second opinion it determined (without citing any authorizing statutory enactment) that the state could levy a tax upon the

vendee's equitable interest without affecting the vendor's legal estate and hold a tax sale of such limited interest subject to and without impairing the estate of the vendor. These inconsistencies cannot be reconciled. This Court held expressly to the contrary in Northern Pacific Railway v. Rockne (supra) where it was said:

> "No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose jurisdiction it is done. If not assessed by direct act of the legislature itself, it must, to be valid, be done under authority of a law enacted by such legislature. A valid sale, therefore, for taxes, being the highest exercise of sovereign power of the state, must carry the title to the property sold, and if it does not do this it is because the assessment is void.
>
> "It follows that, if the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the cost of surveying these lands. If, on the other hand, the sale would not confer such title, it is because there exists no authority to make it. At all events the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of her right to them until these costs are paid."

THE STATUTES

It is significant that the statutes of the State of Minnesota on this subject indicate complete agreement with the foregoing expressions of the United States Supreme Court. Section 279.16, Minnesota Statutes provides the form of judgment in tax sales by the state, and requires that the judgment contain a recital that "the amount of the taxes, penalties, and cost to which as hereinbefore stated, each of said parcels of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation, whatsoever; and it is adjudged that unless the amount to which each of said parcels is liable be paid, each of said parcels be sold, as provided by law, to satisfy the amount to which it is liable."

Section 280.03 recites the form of certificate to be issued to the purchaser at a tax sale and provides:

> "If the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein in fee simple without any other act or deed whatever."

To the same effect is Section 280.11. And Section 280.25, providing for the issuance of a deed in the name of the State, reads:

> ". . . And every such deed shall vest the grantee with complete title to such lands subject to the defenses that the tract or parcel was exempt from taxation or that the taxes for which such tract or parcel was sold at said tax sale had been paid."

There is no provision in the Minnesota Statutes authorizing the taxation of the interest of the vendee in the premises here involved.

Even if the premises were not immune from taxation as being the property of the United States, no tax may be levied unless there be legislative authority therefor.

Minnesota Statutes, Section 272.03 defines real property for the purposes of taxation and is as follows:

> "272.03. Real Property. Real property, for the purposes of taxation, shall be construed to include the land itself and all buildings, structures, and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries, fossils, and trees on or under the same."

It will be noticed that in the assessment of the land all interests are included and no assessment can then be made upon this property unless it includes the interest of the United States. There is no statutory authority whatsoever for the assessment of vendee's interest under a contract of purchase from the United States. Minnesota Statutes do provide for the taxation of the vendee's interest under certain circumstances. Minnesota Statutes 1941, Section 273.19 provides as follows:

> "273.19. Lessees and equitable owners—Property held under a lease for a term of three or more years, or under a contract for the purchase thereof, when the property belongs to the state, or to any religious, scientific, or benevolent society, or institution, incorporated or unincorporated, or to any railroad company, or other corporation whose property is not taxed in the same manner as other property, or when the property is school or other state lands, shall be considered,

for all purposes of taxation as the property of the person so holding the same."

Property held under contract for deed when the fee title is in the United States has not been included in this statute, and properly so since if included, such a purchase would be void for reasons hereinbefore set forth. In the opinion below, this statute is not mentioned or commented upon.

The building on the land being purchased by S. R. A. under this contract for deed is subject to taxation as personal property under Sec. 272.03 Minnesota Statutes reading in part as follows:

"Personal property for the purposes of taxation shall be construed to include:

1. All goods, chattels, moneys, and effects.

2. All ships, boats, and vessels belonging to inhabitants of this state, whether at home or abroad, and all capital invested therein.

3. *All improvements made by others upon lands the fee of which is still vested in the United States.* (Italics supplied.)

This is a clear indication that the Legislature intended that such lands should not be taxable as real estate, and presents statutory authority which the Minnesota court neither followed nor explained away.

CONGRESS HAS NOT CONSENTED TO STATE TAXATION OF THIS PROPERTY

The property of the United States sold under contract is subject to state taxation only by consent of the United States, and the United States has not consented to the taxation of this property. In many instances in recent years, Congress has expressly consented to state and local taxation of property owned by the United States or one of its instrumentalities. Thus Congress has expressly consented to state taxation of lands owned by the Reconstruction Finance Corporation, (15 U. S. C. Sec. 610); to state taxation of lands of homestead entrymen, (43 U. S. C. Sec. 455); to state taxation of lands of desert entrymen, (43 U. S. C. Sec. 455 a); to state taxation of real property acquired by the Federal Housing Administrator, (12 U. S. C. Sec. 1714); to state taxation of real property of the Federal Deposit Insurance Corporation, (12 U. S. C. 264 p); to state taxation of real property owned by the Federal Home Loan Banks, (12 U. S. C. Sec. 1433); by Federal Land Banks, (12 U. S. C. Sec. 931); by Federal Reserve Banks, (12 U. S. C. Sec. 531); by National Farm Loan Associations, (12 U. S. C. Sec. 931).

Lands granted to railroads are now subject to state and local taxation notwithstanding the fact that the railroads may not be entitled to a patent for Congress has expressly consented to such taxation. 73 U. S. C. Sec. 882.

But Congress has not consented to state or local taxation of post office sites which are being sold under contract whereby the title is reserved by the United States until full payment of the purchase price.

CONCLUSION

The Minnesota Court was in error fundamentally in failing to distinguish between taxation of land in rem and taxation of interests in personam. Further than that, it treated the questions presented as matters of State Law when they are under the decisions of this Court, matters of Federal Law. If it be the land that is subject to taxation and not the interests of individuals, then the levy of a tax against the premises here being purchased must be a lien superior to the interests of the vendor, the United States.

Such a conclusion seemed inescapable to other courts when confronted with similar cases. The Minnesota decisions and the late decision of the Fifth Circuit in Ken Realty Co. v. Johnson have introduced discordant notes into what was previously an harmonious unanimity of opinion. The gravity and importance of the questions involved merit a decision by the ultimate judicial authority. To that end petitioner respectfully submits its petition for certiorari to review the decision of the Minnesota Court which petitioner contends is founded upon fundamental error.

Respectfully submitted,

ROLAND J. FARICY,
W-1862 First Natl. Bk. Bldg.,
Saint Paul, Minnesota,
Attorney for Petitioner.

OTIS, FARICY & BURGER
W-1862 First Natl. Bk. Bldg.
Saint Paul, Minnesota
of Counsel

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Supreme Court of the United States

OCTOBER TERM 1945

No. 255

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1941 TAX)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

ROLAND J. FARICY,
W-1862 First Natl. Bk. Bldg.,
Saint Paul, Minnesota,
Attorney for Petitioner.

OTIS, FARICY & BURGER
W-1862 First Natl. Bk. Bldg.
Saint Paul, Minnesota
of Counsel

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Supreme Court of the United States

OCTOBER TERM 1945

No.....

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1941 TAX)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, S.R. A. INCORPORATED, a Minnesota Corporation, hereby petitions for review, upon writ of certiorari, of the decision and judgment of the Supreme Court of Minnesota, being the court of last resort of that State, and respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED

This is a petition by S. R. A. INCORPORATED, a Corporation under the laws of Minnesota, to determine that the title to certain real property in Ramsey County, Minnesota, being purchased by it under contract for deed with the United States, was in the United States of America on

May 1, 1941, and that the same was immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the purchase price for said property had been paid in full to the United States and until the petitioner was entitled to a conveyance from the United States. The tax year here involved is the year 1941.

The case was tried upon a stipulation of facts (R. 83-87). From this stipulation and the findings based thereon (R. 87-91), it appears that S. R. A. INCORPORATED is a Minnesota Corporation; that the property in question is located in Ramsey County, Minnesota, and was acquired by the United States in 1867 and improved by it in 1870 (R. 84); that the premises and the building thereon for many years thereafter were occupied by the United States Government as a post office and as an office for various departments of the government, including the Department of Internal Revenue (R. 84); that in 1939 the United States sold to the petitioner the premises involved under contract for deed, under the terms of which the United States agreed to deliver to petitioner a deed to said premises when the total purchase price had been paid as provided and the terms and conditions of the contract for deed had been complied with (R. 4-11); that the contract was on May 1, 1941, and still is in full force and effect (R. 85).

Prior to May 1, 1941, the petitioner took possession of the premises, as it was entitled to do under the terms of the contract, razed the building thereon, constructed a new building on part thereof, which is leased to various tenants, and leased the remainder of the property for a parking lot (R. 85). On May 1, 1941, the premises were used for com-

mercial purposes, appellant collecting and retaining rents, and no part was used by the United States (R. 85). On May 1, 1941, there was still due and owing to the United States under the contract for deed $103,850.54, and appellant was not entitled to a deed (R. 86). On May 1, 1941, the County of Ramsey, State of Minnesota, assessed and levied a tax against the said premises "subject to fee title remaining in the United States of America" in the sum of $11,431.78 (R. 86), based upon a valuation of $277,600.00 (R. 3). The assessment of this tax was contested by the petitioner, the original petition alleging that the title to the premises was in the United States and that the premises were exempt from taxation, and on the further ground that the valuation was excessive (R. 76-82).

The cause came on for trial upon all issues on April 12, 1944 (R. 87), at which time the court of first instance permitted the amended petition (R. 79-82) to be filed by appellant. Thereafter and at the time of the trial the parties stipulated that for the purposes of this litigation the full and true value of the premises as of May 1, 1940, was $225,000.00 without deduction of any amount on account of the balance remaining due under the contract for deed (R. 86-87). All other facts were stipulated (R. 83-87). The Court found that the premises were not immune from taxation, overruled the objections, held the assessment valid and rendered judgment on May 8, 1944, in favor of the State and adjudged the premises here involved liable for taxes for the year 1941 in the sum of $9,270.97 (R. 91-92). Upon appeal to the Supreme Court of Minnesota, this judgment

was affirmed by decision filed April 13, 1945 (R. 93), and judgment entered April 24, 1945 (R. 93-94).

The position of S. R. A. INCORPORATED was and is that the property in question was not subject to taxation by the State of Minnesota in the year involved (1941), that the property was immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the petitioner was entitled to a deed from the United States under the terms of its contract with the United States; that the "equity" of petitioner was not subject to taxation by the State; and that if the equity was subject to taxation the State erroneously included the value of the interest of the United States in its valuation of the premises.

BASIS OF JURISDICTION.

A review of the judgment is plainly within the jurisdiction of this court under Section 237 (b) of the Judicial Code (28 U. S. C. Section 344) authorizing such review:

> "Where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

The matter was heard by the Court of first instance upon the petition of S. R. A. INCORPORATED and upon stipulated facts (R. 76-87).

This is a special statutory proceeding and no separate answer was required or interposed by the State and therefore the pleadings did not designate the statute under which the right to impose the tax was asserted.

The petition of S. R. A. INCORPORATED (filed in the District Court) alleges that the title to the premises is in the United States and that the premises are exempt from State taxation (R. 76-82). That the levy and assessment of the tax deprives the petitioner of a privilege and immunity secured to it under the Constitution of the United States and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849, and by virtue of the Act of Congress authorizing a state government for the territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857, and is in violation of petitioner's rights under the due process and equal protection clauses of the Federal Constitution, without conjecture as to the

statute under which the State had assumed to impose the tax (R. 81).

This position was advanced and adhered to on appeal to the State Supreme Court, where the same constitutional objections to the tax were raised by assignments of error and argument. In the circumstances, the procedure available to S. R. A. INCORPORATED appears to be by application for certiorari rather than appeal. Memphis Natural Gas Co. v. Beeler, 315 U. S. 649 (62 Sup. Ct. Rep. 857).

The case was tried on April 12, 1944, and the Court of first instance found that the premises were not immune but were subject to state taxation (R. 87-91) and by judgment entered May 8, 1944, adjudged the premises here involved "subject to fee title remaining in the United States of America" liable for taxes in the year 1941 in the sum of $9,270.97 (R. 91-92). Upon appeal that judgment was affirmed by the Supreme Court of Minnesota by opinion dated April 13th, 1945 (R. 93), and by judgment entered April 24th, 1945 (R. 93-94). The judgment sought to be reviewed is that entered April 24, 1945, in the Supreme Court of the State of Minnesota.

This is a companion case to a similar matter involving the tax on the same premises for the taxable year 1940. That matter was passed upon by the Supreme Court of Minnesota in two opinions, one entered December 24, 1942 (R. 27-38), and one entered April 13, 1945 (R. 52-74), and a petition for writ of certiorari to review the judgment of the Supreme Court of Minnesota entered in that cause is filed with the Supreme Court of the United States with this petition.

The decision of December 24, 1942 (R. 27-38) (first above referred to) is reported in 213 Minnesota Reports at page 487; the decision of April 13, 1945 (R. 52-74) is reported in 18 N. W. (2d) 442, but has not yet appeared in the Minnesota Reports.

The opinion in this cause of April 13, 1945 (R. 93), is based upon the two decisions in respect of the 1940 tax on the same premises, is reported in 18 N. W. (2d) 455, but has not yet appeared in the Minnesota Reports.

The filing of this petition is timely since the time for filing was extended to July 24, 1945, by order of this Court dated July 13, 1945.

QUESTIONS PRESENTED

The ultimate questions thus presented are whether the enforcement of the tax as levied would deprive S. R. A. (the petitioner) of its property without due process of law or deny it the equal protection of the laws in violation of Article XIV, Section 1 of the Amendments to the Constitution of the United States or would operate to subject to taxation property of the United States which is immune from taxation under the decisions of this court and contrary to the provisions of Article IV, Section 3 of the United States Constitution and contrary to the provisions of the Organic Act of Minnesota and of the Enabling Act of Congress authorizing the Minnesota State government and of the Constitution of the State of Minnesota.

Specifically, the questions presented are as follows:

1. Where land owned by the United States of America is sold by it under an installment contract for deed, may the State of Minnesota tax such land as real estate prior to such compliance by the purchaser with the contract as will entitle him to a deed?

2. May such land be taxed by the State "subject to fee title remaining in the United States of America?"

3. May the interest of the United States in the premises (assuming non-exemption) be included in determining the value of the property for tax purposes?

REASONS FOR GRANTING OF WRIT

1. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is directly in conflict with the applicable decisions of this Court as expressed in Kansas Pacific Ry. Co. v. Prescott, 16 Wall. 603, 21 L. Ed. 373, Union Pacific Railroad Co. v. McShane, 22 Wall. 444, 22 L. Ed. 747, Northern Pacific Ry. Co. v. Rockne, 115 U. S. 600, 29 L. Ed. 477, 6 Sup. Ct. Rep. 201, Irwin v. Wright, 258 U. S. 219, 66 L. Ed. 573, 42 Sup. Ct. Rep. 293, U. S. v. Allegheny Co., 322 U. S. 174, 64 Sup. Ct. Rep. 908.

2. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is directly in conflict with the decision of the Ninth Circuit Court of Appeals in Lincoln County v. Pacific Spruce Corporation, 26 Fed. 2d 435, and not in accord with the decision of the Fifth Circuit Court of Appeals in Ken Realty Co. v. Johnson, 138 Fed. 2d 809.

3. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is directly in conflict with the decisions of the highest courts of other states as expressed in Mint Realty Co. v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130, Copp v. State, 90 W. Va. 444, 71 S. E. 580, People v. Burke, 142 N. E. 320 affirming 198 N. Y. S. 601, and of intermediate State Courts of Appeal as expressed in People v. Burke, 226 N. Y. S. 882 affirming 217 N. Y. S. 803 and A. B. R. Corporation v. City of Newark, 35 Atl. 2d (N. J.) 473.

4. The matter here presented is of grave importance to petitioner, of course. But it is also of importance to the United States and to the States of the Union. Vast land

areas have been acquired of late years by the United States and at the close of the war, large portions of these areas may be sold to purchasers under contracts such as that here involved. The question of taxation is of vital importance for on the one hand if the premises are non-taxable, the price at which the lands may be sold will be much greater whi on the other hand if taxable, the revenues accruing to the respective states will be increased as the premises are sol

5. Under Article IV, Section 3 of the United States Constitution, Congress has power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. To tax property, the title to which is in the United States, and before the purchaser under contract for deed is entitled t a conveyance, is a direct interference by the State with this power.

The Organic Act of Minnesota, the Enabling Act and the Constitution of Minnesota all provide that no tax shall be imposed upon lands belonging to the United States, and the tax herein sought to be levied and assessed is contrary to the provisions thereof.

ASSIGNMENTS OF ERROR

The Supreme Court of the Minnesota erred:

1. In affirming the judgment of the District Court of Ramsey County, Minnesota, dated May 8, 1944.

2. In holding the tax valid.

3. In holding that the property here involved was subject to taxation by the State of Minnesota "subject to fee title remaining in the United States of America."

4. In refusing to hold that the tax was a violation of Article IV, Section 3 of the Constitution of the United States.

5. In refusing to hold that the tax was a violation of Section 1 of Article XIV of the amendments to the Constitution of the United States.

6. In refusing to hold that the tax was a violation of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849.

7. In refusing to hold that the tax was a violation of the act of Congress authorizing a state government for the Territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857.

8. In refusing to hold that the questions here involved were Federal questions and not controlled by the law of any state under Article VI, Paragraph 2 (the Supremacy clause) of the Constitution of the United States.

9. In refusing to hold that the tax was a violation of Article 2, Section 3 of the Constitution of the State of Minnesota and therefore deprived the petitioner of his property without due process and denied it the equal protection of the law under Section 1, Article XIV of the amendments to the U. S. Constitution.

10. In holding that the petitioner is not in a position to assert the United States tax immunity.

11. In holding that the interests of vendor and vendee in real estate in Minnesota are separable for the purposes of real estate taxation.

12. In refusing to hold that the building on the premises was taxable as personal property under Section 272.03 Minnesota Statutes (1941).

13. In basing its decision in part upon the fact that the premises here involved are used for commercial purposes.

14. In holding that a tax levy upon the vendees equitable interest is not directly or indirectly a tax upon the vendors legal estate.

15. In holding that the State of Minnesota may levy a tax upon a limited interest or estate in real property and, upon default hold a tax sale of such limited interest or estate, subject to and without impairing the outstanding superior lien or other estate.

16. In holding that the doctrine of the federal land-grant cases has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign.

ARGUMENT

I.

Enforcement of the tax in question would deprive S. R. A. INCORPORATED of its property without due process of law and deny it the equal protection of the law.

The decision of the Supreme Court of Minnesota is in conflict with the applicable decisions of this court and of the decisions of other federal and state courts respecting the taxation of property sold under contract, the legal title to which is in the United States prior to the time the contract has been so far performed as to entitle the purchaser to a deed.

In the State Court decisions in Mint Realty Co. v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130, Copp v. State, 90 W. Va. 444, 71 S. E. 580, A. B. R. Corporation v. City of Newark, 35 Atl. 2d 473, People v. Burke, 142 N. E. (N. Y.) 320 and 222 N. Y. S. 882, in the decision of the Circuit Court of Appeals for the Ninth Circuit in Lincoln Co. v. Pacific Spruce Corporation, 26 Fed. 2nd 435, and in the U. S. District Court decision in U. S. v. City of Milwaukee, 100 Fed. 828, the precise situation to be considered in this case was presented and in each case it was held that the land in question was not subject to taxation so long as legal title remained in the United States until all conditions required to be performed by the purchaser, including full payment of the purchase price, had in fact been performed. The decisions of the United States Supreme Court in Kansas Pacific Railway vs. Prescott, 16 Wall. 603, 21 L. Ed. 373, Union Pacific Railroad Co. vs. McShane, 22 Wall. 444,

22 L. Ed. 747, Northern Pacific Ry. Co. vs. Rockne, 115 U. S. 600, 29 L. Ed. 477, 6 Sup. Ct. Rep. 201 and Irwin vs. Wright, 258 U. S. 219, 6 L. Ed. 573, 42 Sup. Ct. Rep. 293. while relating to disposition of Federal lands by grant to railroads or to homesteaders embody the same principles of law and are strictly analogous to the case here presented for review. The attempt on the part of the Supreme Court of Minnesota to distinguish these decisions on the ground that the disposition here is by contract for deed, is based upon no authority, and is not convincing. We respectfully submit that the same principle of law should be applied in both instances. Until the first Minnesota decisions involved in this proceeding, no contrary opinion had ever been written by a court of final jurisdiction. The point was settled insofar as it is possible for a point to be settled by case law. In the case of Ken Realty Company v. Johnson, 138 Fed. 2d 809, the Fifth Circuit Court of Appeals in an almost identical case held that the purchaser under such a contract as is involved in this proceeding which reserved title in the United States had an interest subject to taxation under Alabama laws, the value of the interest being measured each tax year by the value of the whole property, diminished by the amount of the unpaid purchase money.

The decisions by the Supreme Court of Minnesota here being considered rest upon two bases—first: that the interests of S. R. A. and of the United States in the premises involved were, for the purpose of taxation, separable, and second: that S. R. A. could not assert the immunity. This Court is the case of U. S. v. Allegheny County 322 U. S. 174, 64 Sup. Ct. Rep. 908, reached an opposite conclusion

on each point. In addition, this Court in that case determined that the titles or liens created by such a contract for deed as is here in issue was a question of federal law not controlled by the law of any state.

Of course, the vendee under the contract for deed has an interest in the land, call it an "equity," or an "equitable interest," or an "equitable title." The vendee has a property right which is entitled to protection and which may be conveyed, but that interest or right is only pro tanto and full or perfect equitable title only matures upon performance by the vendee of the conditions of the contract, such as payment in full of the purchase price.

Here the State has attempted to tax the real estate "subject to fee title remaining in the United States of America." This Court has ruled directly that the equity of the vendee may not be assessed and taxed. In the case of Irwin v. Wright, (supra), Irwin was a homestead entryman under the Homestead Act and the Reclamation Act of land in Arizona. He had not fulfilled any of the conditions required by him to be performed before a patent would issue. The State of Arizona attempted to tax the equity of Irwin in the premises. This court held such equity was not taxable.

In Lincoln County v. Pacific Spruce Corporation (supra) the court held that the purchaser had no such interest in the property that was subject to taxation by the county because of title reserved by the United States Spruce Corporation, holding that if the government had parted with everything except the naked legal title, the property was subject to taxation; otherwise it was not. These two decisions would seem to be controlling as a matter of federal law.

The same result was reached by the Pennsylvania Supreme Court in Mint Realty Company v. Philadelphia (supra) and by the New York Supreme Court in People v. Burke (supra).

In the instant case the State contends, and the Supreme Court of Minnesota determined that it was the property of S. R. A. that was being taxed, not that of the United States. In determining the value of the land for the purposes of taxation, the value of all interests was embraced, including the interest of the United States. The property in question was assessed and taxed as all other real property in the County and without deduction of any amount due to the United States under the contract for deed.

We call particular attention to the conclusion reached by this Court in the case of U. S. v. Allegheny County (Supra) that the same result was reached by including the value of the machinery owned by the Government in the assessment of the land as would have been reached if the machinery were taxed in form and the substance of the procedure was to lay an ad valorem general property tax on property owned by the United States. If the power to tax be assumed, the inclusion of the interest of the United States in determining the value for tax purposes is clearly erroneous.

The Supreme Court of Minnesota in its first opinion recognized that in Minnesota proceedings to enforce real estate taxes are in rem, that real estate taxes are assessed against the land itself and that they are not against the person owning the property or his estate. In its second opinion it determined (without citing any authorizing statutory enactment) that the state could levy a tax upon the

vendee's equitable interest without affecting the vendor's legal estate and hold a tax sale of such limited interest subject to and without impairing the estate of the vendor. These inconsistencies cannot be reconciled. This Court held expressly to the contrary in Northern Pacific Railway v. Rockne (supra) where it was said:

> "No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose jurisdiction it is done. If not assessed by direct act of the legislature itself, it must, to be valid, be done under authority of a law enacted by such legislature. A valid sale, therefore, for taxes, being the highest exercise of sovereign power of the state, must carry the title to the property sold, and if it does not do this it is because the assessment is void.
>
> "It follows that, if the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the costs of surveying these lands. If, on the other hand, the sale would not confer such title, it is because there exists no authority to make it. At all events the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of her right to them until these costs are paid."

THE STATUTES

It is significant that the statutes of the State of Minnesota on this subject indicate complete agreement with the foregoing expressions of the United States Supreme Court. Section 279.16, Minnesota Statutes provides the form of judgment in tax sales by the state, and requires that the judgment contain a recital that "the amount of the taxes, penalties, and cost to which, as hereinbefore stated, each of said parcels of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation, whatsoever; and it is adjudged that unless the amount to which each of said parcels is liable to be paid, each of said parcels be sold, as provided by law, to satisfy the amount to which it is liable."

Section 280.03 recites the form of certificate to be issued to the purchaser at a tax sale and provides:

> "If the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein in fee simple without any other act or deed whatever."

To the same effect is Section 280.11. And Section 280.25, providing for the issuance of a deed in the name of the State, reads:

> ". . . And every such deed shall vest the grantee with complete title to such lands subject to the defenses that the tract or parcel was exempt from taxation or that the taxes for which such tract or parcel was sold at said tax sale had been paid."

There is no provision in the Minnesota Statutes authoriz-

ing the taxation of the interest of the vendee in the premises here involved.

Even if the premises were not immune from taxation as being the property of the United States, no tax may be levied unless there be legislative authority therefor.

Minnesota Statutes, Section 272.03 defines real property for the purpose of taxation and is as follows:

> "272.03. Real Property. Real property, for the purpose of taxation, shall be construed to include the land itself and all buildings, structures, and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries, fossils, and trees on or under the same."

It will be noticed that in the assessment of the land all interests are included and no assessment can then be made upon this property unless it includes the interest of the United States. There is no statutory authority whatsoever for the assessment of vendee's interest under a contract of purchase from the United States. Minnesota Statutes do provide for the taxation of the vendee's interest under certain circumstances. Minnesota Statutes 1941, Section 273.19, provides as follows:

> "273.19. Lessees and equitable owners—Property held under a lease for a term of three or more years, or under a contract for the purchase thereof, when the property belongs to the state, or to any religious, scientific, or benevolent society or institution, incorporated or unincorporated, or to any railroad company or other corporation whose property is not taxed in the same manner as other property, or when the property is school or other state lands, shall be considered,

for all purposes of taxation as the property of the person so holding the same."

Property held under contract for deed when the fee title is in the United States has not been included in this statute, and properly so since if included, such a purchase would be void for reasons hereinbefore set forth. In the opinion below, this statute is not mentioned or commented upon.

The building on the land being purchased by S. R. A. under this contract for deed is subject to taxation as personal property under Sec. 272.03 Minnesota Statutes reading in part as follows:

"Personal property for the purposes of taxation shall be construed to include:

1. All goods, chattels, moneys, and effects.
2. All ships, boats, and vessels belonging to inhabitants of this state, whether at home or abroad, and all capital invested therein.
3. *All improvements made by others upon lands the fee of which is still vested in the United States.* (Italics supplied.)

This is a clear indication that the Legislature intended that such lands should not be taxable as real estate, and presents statutory authority which the Minnesota court neither followed nor explained away.

CONGRESS HAS NOT CONSENTED TO STATE TAXATION OF THIS PROPERTY

The property of the United States sold under contract is subject to state taxation only by consent of the United States, and the United States has not consented to the taxation of this property. In many instances in recent years, Congress has expressly consented to state and local taxation of property owned by the United States or one of its instrumentalities. Thus Congress has expressly consented to state taxation of lands owned by the Reconstruction Finance Corporation, (15 U. S. C. Sec. 610); to state taxation of lands of homestead entrymen, (43 U. S. C. Sec. 455); to state taxation of lands of desert entrymen, (43 U. S. C. Sec. 455a); to state taxation of real property acquired by the Federal Housing Administrator, (12 U. S. C. Sec. 1714); to state taxation of real property of the Federal Deposit Insurance Corporation, (12 U. S. C. 264 p); to state taxation of real property owned by the Federal Home Loan Banks, (12 U. S. C. Sec. 1433); by Federal Land Banks, (12 U. S. C. Sec. 931); by Federal Reserve Banks, (12 U. S. C. Sec. 531); by National Farm Loan Associations, (12 U. S. C. Sec. 931).

Lands granted to railroads are now subject to state and local taxation notwithstanding the fact that the railroads may not be entitled to a patent for Congress has expressly consented to such taxation. 73 U. S. C. Sec. 882.

But Congress has not consented to state or local taxation of properties which are being sold under contract whereby the title is reserved by the United States until full payment of the purchase price.

CONCLUSION

The Minnesota Court was in error fundamentally in failing to distinguish between taxation of land in rem and taxation of interests in personam. Further than that, it treated the questions presented as matters of State Law when they are under the decisions of this Court, matters of Federal Law. If it be the land that is subject to taxation and not the interests of individuals, then the levy of a tax against the premises here being purchased must be a lien superior to the interests of the vendor, the United States.

Such a conclusion seemed inescapable to other courts when confronted with similar cases. The Minnesota decisions and the late decision of the Fifth Circuit in Ken Realty Co. v. Johnson have introduced discordant notes into what was previously an harmonious unanimity of opinion. The gravity and importance of the questions involved merit a decision by the ultimate judicial authority. To that end petitioner respectfully submits its petition for certiorari to review the decision of the Minnesota Court which petitioner contends is founded upon fundamental error.

Respectfully submitted,

ROLAND J. FARICY,
W-1862 First Natl. Bk. Bldg.,
Saint Paul, Minnesota,
Attorney for Petitioner.

OTIS, FARICY & BURGER
W-1862 First Natl. Bk. Bldg.,
Saint Paul, Minnesota
of Counsel

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Supreme Court of the United States

OCTOBER TERM 1945
No. 254, 255.

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1940, 1941 TAX)

BRIEF OF PETITIONER.

ROLAND J. FARICY
Attorney for Petitioner
W-1862 First Nat'l Bank Bldg.
Saint Paul, Minnesota.

OTIS, FARICY & BURGER
W-1862 First Nat'l Bank Bldg.
Saint Paul, Minnesota
of Counsel

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Supreme Court of the United States

OCTOBER TERM 1945

No. 254, 255.

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1940, 1941 TAX)

BRIEF OF PETITIONER.

GROUNDS OF JURISDICTION.

The jurisdiction of the Court is invoked on the ground that the title to the premises against which an *ad valorem* tax was assessed by the State of Minnesota is in the United States of America; that the premises are exempt from state taxation; that the levy and assessment of the tax deprives the Petitioner of a privilege and immunity secured to it under the Constitution of the United States, particularly Article VI, Section 2 (the Supremacy clause) and Article IV, Section 3, and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849, and by virtue of the Act of

Congress authorizing a State Government for the territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857, and is in violation of Petitioner's rights under the due process and equal protection clauses of Article XIV, Section 1 of the Amendments to the Constitution of the United States.

Jurisdiction in such cases is conferred by Section 237(b) of the Judicial Code (28 U. S. C. Section 344) authorizing a review by this court,

> "Where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

STATEMENT OF CASE.

Two cases are before the Court. The first, No. 254, relates to the 1940 real estate taxes levied and assessed by the State of Minnesota against a parcel of land in Ramsey County, Minnesota, hereinafter more fully described, and No. 255, relates to the 1941 real estate taxes levied and assessed by the State of Minnesota upon the same parcel. The issues are the same and we are taking the liberty of presenting the two causes under one brief.

These proceedings were instituted by S. R. A. INCORPORATED by a petition under a special statutory proceeding provided by Section 278.01 to 278.05 Mason's Minnesota Statutes to determine that the title to certain real property in Ramsey County, Minnesota being purchased by it under a contract with the United States of America was in the United States of America on May 1, 1940, and May 1, 1941,

the dates when the levy were made, and that the premises were immune and exempt from taxation by the State of Minnesota or the County of Ramsey within said state until the purchase price for said property had been paid in full to the United States and until the Petitioner was entitled to a conveyance from the United States. The cases were tried upon stipulations of facts (R. 12-16, 42-47, 83-87). From these stipulations it appears that S. R. A. INCORPORATED is a Minnesota corporation; that the real estate in question is located in Ramsey County, Minnesota and was acquired by the United States in 1867 and improved by it in 1870; that the premises and the building which was erected by the United States thereon were occupied by the United States Government for many years as a post office and as an office for various departments of the Government including the Department of Internal Revenue (R. 13); that in 1939, the United States sold these premises to the Petitioner for $121,101.00 under a contract by the terms of which the purchaser agreed to pay 5 per cent of the purchase price on the date of the execution of the contract, 5 per cent nine months from the date of the acceptance of the proposal by the Government and the balance at the rate of $9,500.00 a year for nine years including principal and interest, the remaining balance to be paid at the end of the tenth year, and the United States agreed to deliver to the Petitioner a quit claim deed conveying to it a marketable title to said premises, free and clear from all encumbrances, objections or defects except such as were noted in the contract and except such as may have accrued against the purchaser's interest in the property subsequent to the acceptance of the proposal when

the total purchase price had been paid as provided and the terms and conditions of the contract had been complied with (R. 4-11); that on May 1, 1940, and May 1, 1941, the contract was still in full force and effect (R. 14, 45, 85-86).

The sale was made pursuant to Act of Congress of August 27, 1935, 49 Stat. 885, U. S. C. Title 40, Section 304 (a) (R. 4, 6).

The contract provides further that the same may be terminated upon failure of the purchaser to comply with any of the terms and conditions, whereupon any installments already paid shall be retained by the Government and that the Government may then resume possession of the premises and at its option again sell the same and recover from the defaulting purchaser any deficiency in price resulting from the resale together with all expenses incurred by reason of the default. With the consent of the Government, the purchaser in advance of final payment may have conveyance of portions of the property upon advance payment of such portion or portions of the total purchase price as the Government shall determine. Leases may be executed without the Government's approval "but shall be subordinate *to the Government's interest in the property,*" (R. 4-11).

Prior to May 1, 1940, the Petitioner took possession of the premises as it was entitled to do under the terms of the contract, razed the building thereon, constructed a new building on a part thereof which is leased to various tenants and leased the remainder of the property for a parking lot. On May 1 of each year involved, the premises were used for commercial purposes, the Petitioner collecting and retaining the rents and no part was used by the United States (R. 14,

45, 85). On May 1, 1940, there was still due and owing to the United States under the contract $108,990.90 (R. 45) and on May 1, 1941, $103,850.84 (R. 86).

On May 1, 1940, the County of Ramsey, State of Minnesota, assessed and levied a tax against said premises "subject to fee title remaining in the United States" in the sum of $11,129.75 (R. 46) and on May 1, 1941, a tax amounting to $11,431.78 (R. 86), both based upon a valuation of $277,600 (R. 3).

The 1940 tax originally came on for trial before the court of first instance, District Court of Ramsey County, Minnesota, on December 1, 1941, upon a stipulation of facts (R. 12-16). Under Paragraph 13 of that stipulation, only the question of immunity from taxation was submitted to the Court. The court of first instance found that the premises were immune from taxation upon the ground that they constitute property of the United States and findings of fact, conclusions of law and an order for judgment to that effect were entered (R. 16-21). A motion by the state for amended findings or for a new trial was denied by the lower court (R. 25-26). The state appealed from that order to the Supreme Court of the State of Minnesota and by the decision of that Court dated December 24, 1942, and reported in 213 Minn. Rep. 487 (7 N. W. 2d 484) (R. 27-38), the order of the lower court was reversed.

The 1940 tax case came on for trial upon all issues on April 12, 1944, and at the same time the 1941 tax case was presented. The facts were stipulated. Among other things, it was agreed that the full and true value of the premises as of May 1, 1940 and May 1, 1941, for the purposes of this

litigation, was $225,000.00 without deduction of any amount on account of the balance remaining due under the contract with the United States of America (R. 46, 86-87). The Court found that the premises were not immune from taxation, overruled the objections, held the assessments valid and rendered judgments on May 8, 1944, in favor of the state and adjudged the premises here involved liable for taxes for the year 1940 in the sum of $9,026.17 and for the year 1941 in the sum of $9,270.97 (R. 51-52, 91-92). Upon appeal to the Supreme Court of Minnesota these judgments were affirmed by decisions filed April 13, 1945 (R. 52-74, 93) and judgments entered April 24, 1945 (R. 74, 93-94). The decision respecting the 1940 tax is reported in 219 Minn. 493, 18 N. W. 2d 442, that respecting the 1941 tax in 219 Minn. 517, 18 N. W. 2d 455. The constitutional objections were raised in the petitions to the District Court (R. 1-11, 38-42, 79-83) and by brief and oral argument in the Supreme Court.

ASSIGNMENTS OF ERROR.

The Supreme Court of Minnesota erred:

1. In affirming the judgments of the District Court of Ramsey County, Minnesota, dated May 8, 1944.

2. In holding the tax valid.

3. In holding that the property here involved was subject to taxation by the State of Minnesota "subject to fee title remaining in the United States of America."

4. In refusing to hold that the tax was a violation of Article IV, Section 3 of the Constitution of the United States.

5. In refusing to hold that the tax was a violation of Section 1 of Article XIV of the amendments to the Constitution of the United States.

6. In refusing to hold that the tax was a violation of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849.

7. In refusing to hold that the tax was a violation of the act of Congress authorizing a state government for the Territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857.

8. In refusing to hold that the questions here involved were Federal questions and not controlled by the law of any state under Article VI, Paragraph 2 (the Supremacy Clause) of the Constitution of the United States.

9. In refusing to hold that the tax was a violation of Article 2, Section 3 of the Constitution of the State of Minnesota and therefore deprived the petitioner of his property without due process and denied it the equal protection of the law under Section 1, Article XIV of the amendments to the U. S. Constitution.

10. In holding that the petitioner is not in a position to assert the United States tax immunity.

11. In holding that the interests of vendor and vendee in real estate in Minnesota are separable for the purposes of real estate taxation.

12. In refusing to hold that the building on the premises was taxable as personal property under Section 272.03 of Minnesota Statutes (1941).

13. In basing its decision in part upon the fact that the premises here involved are used for commercial purposes.

14. In holding that a tax levy upon the vendees equitable interest is not directly or indirectly a tax upon the vendors legal estate.

15. In holding that the State of Minnesota may levy a tax upon a limited interest or estate in real property and, upon default, hold a tax sale of such limited interest or estate, subject to and without impairing the outstanding superior lien or other estate.

16. In holding that the doctrine of the federal land grant cases has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign.

QUESTIONS PRESENTED.

The ultimate questions presented are whether the enforcement of the tax as levied would deprive S. R. A. Inc. (the petitioner) of its property without due process of law or deny it the equal protection of the laws in violation of Article XIV, Section 1 of the Amendments to the Constitution of the United States, or would operate to subject to state taxation property of the United States which is immune from taxation under the decisions of this court and contrary to the provisions of Article IV, Section 3 of the United States Constitution and contrary to the provisions of the Organic Act of Minnesota and of the Enabling Act of Congress authorizing the Minnesota State Government and of the Constitution of the State of Minnesota.

Specifically, and severally the questions presented are as follows:

1. Where land owned by the United States of America is sold by it under an installment contract, may the State of Minnesota tax such land as real estate prior to such compliance by the purchaser with the contract as will entitle him to a deed?

2. May such land be taxed by the State "subject to fee title remaining in the United States of America?"

3. May the interest of the United States in the premises (assuming non-exemption) be included in determining the value of the property for tax purposes?

SUMMARY OF ARGUMENT.

1. Lands belonging to the United States are immune from any form of taxation by the State of Minnesota in the absence of express Congressional consent.

2. Under Article IV, Section 3 of the Federal Constitution the disposition of lands belonging to the United States is strictly a matter for Congressional action. The power to dispose of Federal lands is absolute and without limitation except as Congress itself may place limitations in establishing the terms and conditions under which disposition may be made. The Act of Congress (40 U. S. C. 304(a)) authorizing the sale of the premises here involved confers administrative discretion in the Director of Procurement to sell upon such terms and conditions as he may deem in the public interest.

3. The lands here sought to be taxed belong to the United States. The contract with S. R. A. Inc. pursuant to the Legislative authority granted by Congress did not divest the United States of its ownership. On the contrary, the contract expressly recognized the continuing title and ownership of the United States and provides the method, and the only method, by which that title and that ownership may be divested, namely, compliance by the purchaser with the terms of the contract including full payment of the purchase price.

4. The validity and construction of contracts through which the United States exercises its constitutional functions, their consequences on the rights and obligations of parties, the titles or liens which they create or permit are questions of Federal law not controlled by the law of any state under Article VI of the Constitution.

5. Where the conditions under which real property owned by the United States may be alienated have been prescribed by Congress or by administrative officials acting under Congressional authority, equitable title, sufficient to permit the taxation of such real property by the States, does not mature until all such conditions required to be performed by the purchaser to secure a deed have been complied with. While any part of the purchase price remains unpaid, the right to subject the property to local taxation does not exist.

6. The Minnesota real property tax is an *ad valorem* tax against property, not persons, and is predicated upon jurisdiction of property, not owners. This property cannot be taxed without including in the assessment the title and ownership of the United States. The lien of the tax, if the tax be valid, must be superior to the interests of the United States and a tax sale must include the title, ownership and interest of the United States.

7. No statutory authority has been provided by the State of Minnesota for the taxation of the separate interests in land where the United States, being the owner has sold the same under contract, the terms of which have not been performed fully. No valid authority to that end can be established by the State of Minnesota without the concurrence of Congress. The "equity" in lands of a purchaser from the United States under such a contract as is here presented cannot be subjected to taxation by the State.

8. The power of taxation is a legislative function and taxes can be levied and collected only under statutory authority. If the legislature fails to provide for the taxation of separate interests in land, the courts are not author-

ized to supply the omission and to adjudge the separate interests subject to taxation. Neither the taxing authorities nor the Minnesota Supreme Court have cited any statutory or legislative authorization for the taxation of any interest less than the whole in this matter.

9. Where a Federal right is concerned, the Supreme Court of the United States is not bound by the characterization given to a state tax by the state courts, or relieved by it from the duty of considering the real nature of the tax and its effect upon the Federal right asserted. The interests here sought to be separated are not severable for the purposes of taxation as a matter of Federal Law. Assuming that they are severable, the Statutes of Minnesota authorize no assessment against the separate interests. In either event, the rights of S. R. A. under the 14th Amendment to the Constitution are violated by the attempt of the State to enforce the tax. The act of the Minnesota taxing officers and the decision of the Minnesota Supreme Court are without precedent or authority.

10. The State of Minnesota clearly recognizes the immunity of this land from real estate taxes. Under Section 272.03 Subd. 3, Minnesota Statutes, "All improvements made by others upon lands the fee of which *is still vested* in the United States" (italics supplied) is made subject to *personal property taxes* notwithstanding that Subd. 2 of the same section includes "buildings" in the definition of "real property." Personal property taxes in Minnesota are charges against persons and are collectible without resort to the thing which is the subject of the tax.

11. Assuming non-immunity, the value of the interest of the Government has been included in the assessment. The

resulting tax is a tax against the interest of the United States. The procedure of the assessor is consistent with no other theory than that the whole land, including all interests, was being assessed and taxed. The substance of this procedure was to lay an *ad valorem* tax on property owned by the United States.

12. The tax against the premises here involved is invalid because there exists no authority on the part of the State of Minnesota to levy, assess or collect it. S. R. A. as the purchaser of the premises can assert the immunity and prevent a tax sale of the premises which would have the effect of impeding the United States in the assertion of her right to them until the terms of the contract have been completely performed.

THE NATURE OF THE TAX UNDER MINNESOTA STATUTES.

The tax involved is a real estate tax levied by the Assessor of Ramsey County, Minnesota upon the lands which are the subject of the contract between the United States and S. R. A. The tax records contain the following entries pertaining to the assessment, to-wit (R. 46, 86): Assessed in the name of "S. R. A. Incorporated (subject to fee title remaining in the United States of America)" then follow the description of the property, the assessed valuation and the general tax resulting from the application of the tax rate to the valuation.

Minnesota employs as its scheme of real property taxation the *ad valorem* general property tax. The applicable statutes are set forth in full in the appendix. The tax is assessed against the land and not against the owner. The land is the sole source to which the State may look for the revenue. There is no personal obligation on the part of the owner. State v. Washington County, 207 Minn. 530, 292 N. W. 204.

The Minnesota Supreme Court in the decisions under review recognized this to be the law saying (R. 31):

> "Under our law, real estate taxes are assessed and enforced against the land itself, they are not charges against the person owning the property or his estate. Proceedings to enforce them are strictly *in rem*. In that respect they differ from personal property taxes which are enforced *in personam* although assessed and imposed because of property ownership."

As was said by this Court in Ballard v. Hunter, 204 U. S. 241, 27 Sup. Ct. Rep. 261, 51 L. Ed. 461, with reference to

the Statutes of Arkansas, our statutes "virtually make the land a party to the suit to collect taxes. It is from the lands alone and not from their owner that the taxes are to be satisfied."

The lands are identified and what is called a true and full value is placed thereon by the Assessor (Minnesota Statutes Sec. 273.11). A percentage of this full and true value is taken based upon classification to obtain the assessed valuation (Sec. 273.13). To this is applied a uniform rate based upon the needs for revenue (Sec. 275.09). The tax thus produced becomes a lien upon the land (Sec. 272.31) and upon default in payment, the land is sold by the state (Sec. 280.01). The sale is not affected on account of the use of another name than that of the true owner in describing the ownership of the parcel (Sec. 280.06).

No provision exists for the assessment and taxation of interests in land except by special statutory enactments relating to special subjects such as mineral, gas, coal and oil assessed separate and apart from the surface under Section 272.04. In the definition of "real property" for the purposes of taxation (Sec. 272.03) "all rights and privileges thereto belonging or in anywise appertaining" are included. Under the same section (subd. 3) "personal property" is to be construed to include "improvements made by others upon land, the fee title of which is still vested in the United States."

Personal property taxes are *in personam*, are assessed against the person and not against the property. The person is taxed on account of the property and the value of the property determines the amount of the tax but the liability is purely personal. Clark v. County of Stearns, 47 Minn. 552, 50 N. W. 615.

ARGUMENT.

I. Lands Belonging to the United States Are Immune From Any Form of Taxation By the State of Minnesota in the Absence of Express Congressional Consent.

The Constitution of the United States does not in specific terms deny to the states the right to tax the property of the United States but in the early case of McCulloch v. Maryland, 4 Wheaton 316, this Court definitely established the rule to be that the people of a single state could not, through that state, extend sovereignty to those means employed by Congress to carry into execution powers conferred upon Congress by the people of all of the United States.

The fundamental proposition established by this decision that property belonging to the United States is immune from state taxation would have deprived the State of Minnesota upon its becoming a member of the Union of its right to tax any Federal lands. In the dealings between the United States of America and the State of Minnesota upon admission of Minnesota to the Union, the rule so established was adopted and made a solemn compact. Under the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849, it is provided, among other things, as follows:

> "Paragraph 6. And be it further enacted . . . that no tax shall be imposed upon the property of the United States . . ."

The Act of Congress authorizing the State Government, which was adopted by Congress on the 26th day of February, 1857, provided, among other things, as follows:

"Paragraph 5. That . . . no tax shall be imposed upon lands belonging to the United States . . ."

Article 2, Section 3 of the Constitution of the State of Minnesota provides as follows:

"Paragraph 3. Acceptance of enabling act—The proposition contained in the act of Congress entitled, 'An act to authorize the people of the territory of Minnesota to form a constitution and state government, preparatory to their admission into the Union on an equal footing with the original states," are hereby accepted, ratified, and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this state shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents."

Congress may, if it chooses, relax the rule of tax immunity of property owned by the United States and may consent to the taxation of such property by the states, but this is a function of Congress, not of the Courts.

In a great many instances in recent years, Congress has expressly consented to state and local taxation of property owned by the United States or by one of its instrumentalities. Thus Congress has expressly consented to state taxation of lands owned by the Reconstruction Finance Corporation, (15 U. S. C. Sec. 610); to state taxation of lands of homestead entrymen, (43 U. S. C. Sec. 455); to state taxa-

tion of lands of desert entrymen, (43 U. S. C. Sec. 455a); to state taxation of real property acquired by the Federal Housing Administrator, (12 U. S. C. Sec. 1714); to state taxation of real property of the Federal Deposit Insurance Corporation, (12 U. S. C. 264p); to state taxation of real property owned by the Federal Home Loan Banks, (12 U. S. C. Sec. 1433); by Federal Land Banks, (12 U. S. C. Sec. 931); by Federal Reserve Banks, (12 U. S. C. Sec. 531); by National Farm Loan Associations, (12 U. S. C. Sec. 931).

Lands granted to railroads are now subject to state and local taxation notwithstanding the fact that the railroads may not be entitled to a patent for Congress has expressly consented to such taxation. 73 U. S. C. Sec. 882.

But Congress has not consented to state or local taxation of properties which are being sold under contract whereby the title is reserved by the United States until full payment of the purchase price.

II. The Power of Congress to Dispose of Federal Lands Is Absolute and Where Conditions Have Been Imposed Either By Congress Or By Administrative Officials Under Congressional Authority, No Taxable Interest Passes To the Purchaser Prior To Full Performance of the Conditions.

The disposition of lands belonging to the United States is strictly a matter for congressional action. Article IV, Section 3, Clause 2 of the Constitution of the United States provides that "the Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States

* * *;" Article I, Section 8, Clause 18 gives Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution" all powers vested in the Government or in any department or officer thereof; and Article VI, Clause 2 makes the laws of the United States enacted pursuant thereto "the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The contract with S. R. A. is fully authorized by the Act of Congress under which the sale was made, 49 Stat. 885, U. S. C. Title 40 Sec. 304 (a). As was said in the case of United States v. Allegheny County, 322 U. S. 174, 64 Sup. Ct. Rep. 908, "It must be accepted as an act of the Federal Government, warranted by the Constitution and regular under statute."

The power to dispose of the public property is absolute and without limitation, Shannon v. United States, 160 Fed. 870, and Congress may make the disposition on such terms and conditions and subject to such restrictions and limitations as it considers will best promote the public welfare. United States v. Fisher, 11 Fed. 2d 629. The Director of Procurement has no power in the absence of express authority conferred by Congress to dispose of public property. Therefore, the exercise of the power of disposition which was invoked in the contract for the sale of the premises here involved flows directly from the act of August 27, 1935, 40 U. S. C. 304 (a) hereinbefore referred to. The contract so drafted expressly recognizes the continuing title and ownership of the United States and provides the method, and the

only method, by which that title and that ownership may be divested, namely, compliance by the purchaser with the terms of the contract, including full payment of the purchase price.

The question is, "Has the United States by its execution of the contract which is before the Court, divested itself of everything except the naked legal title?" If title to the property passed to S. R. A. under the contract, there would be no occasion for the language requiring performance of certain conditions such as payment of the purchase price before a deed will issue. The intention of the Government to retain title and ownership is further evidenced by the condition permitting conveyance in part before final payment *if* and *only if* the Government is satisfied that no loss to it or impairment of its security will result. The contract itself asserts the only conditions upon which the United States can be stripped of the title to any part or portion of its property.

When the conditions under which real property owned by the United States may be alienated have been prescribed either by Congress or by administrative officials acting under Congressional authority, equitable title sufficient to permit the taxation of such real property by the states does not mature until all such conditions required to be performed by the purchaser to secure a deed have been complied with. Where it is provided that a deed will be executed by the United States when the full amount of the purchase price has been paid, payment of the full amount is a condition precedent which must be performed before *any part of the ownership* of the land passes from the United States. While

any part of the purchase price remains unpaid, the right to subject the property to local taxation does not exist.

This proposition has been established clearly by the decisions of this Court. The first case was that of Railway v. Prescott, 16 Wall. 603, (1872). An act of Congress authorizing the granting of land to a railroad company to aid in the construction of its roads gave to the company alternate sections of land on each side of the road and provided for a patent to issue as each forty mile section should be completed and accepted by the president; provided that before any land could be conveyed to the railroad company "there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or party in interest as the titles shall be required by said company." The railway company completed some forty miles of road which had been accepted by the president but the cost of surveying, selecting, and conveying had never been made and no patent for the land had issued.

The action was originally instituted in the state courts of Kansas by the railway company against one Prescott to quiet title to a tract of land in Kansas, title to which the railway claimed under the Act of Congress of 1862. Prescott set up a tax title to the land for taxes assessed in 1868, with a subsequent sale. The question to be determined was whether or not the property was subject to taxation in 1868 and whether or not the tax title had any validity. The Supreme Court said that if it was owned by the United States, it was not subject to taxation and the sale was void, while if it was owned by the railroad company, it was a proper subject for taxation and the title of the railway

company was divested under the tax sale. The Supreme Court of the United States said:

> "While we recognize the doctrine heretofore laid down by this court, that lands sold by the United States may be taxed before they have parted with the legal title by issuing a patent, it is to be understood as applicable to cases where the *right* to the patent is complete, and the equitable title is fully vested in the party without anything more to be paid, or any act to be done going to the foundation of his right.
>
> "The present case does not fall within that principle.
>
> "Two important acts remain to be done, the failure to do which may wholly defeat the right of the company to a patent for these lands.
>
> "The first is the payment of the costs of surveying. It is admitted that this has never been done in the present case. If the company have such an interest in the lands that they can be sold by the State under her power of taxation, then the title is divested out of the government without its consent, and the right to recover the money expended in the surveys is defeated. As the government retains the legal title until the company or some one interested in the same grant or title shall pay these expenses, the State cannot levy taxes on the land, and under such levy sell and make a title which might in any event defeat this right of the Federal Government reserved in the act by which the inchoate grant was made."

This case was followed and approved by Railway Company v. McShane, 22 Wall. 444, (1874), and in Northern Pacific Railway Company v. Rockne, 115 U. S. 600, 6 Sup. Ct. 201, and Irwin v. Wright, 258 U. S. 219, 42 Sup. Ct. 293 (1922).

In Railway Company v. McShane, supra, the State of Nebraska attempted to tax lands of the Railroad granted to it under an Act of Congress providing "that before any land granted by this act shall be *conveyed* to the said company * * * there shall first be paid into the Treasury of the United States, the cost of surveying, etc." This Court said:

> "That the payment of these costs of surveying the land is a condition precedent to the right to receive the title from the government, can admit of no doubt. Until this is done, the equitable title of the company is incomplete. *There remains a payment to be made to perfect it. There is something to be done without which the company is not entitled to a patent.* The case, clearly, is not within the rule which authorizes State taxation of lands the title of which is in the United States.
>
> "The reason of this rule is also fully applicable to this case. The United States retains the legal title by withholding the patent, for the purpose of securing the payment of these expenses, and it cannot be permitted to the States to defeat or embarrass this right by a sale of the lands for taxes. If such a sale could be made, it must be valid if the land is subject to taxation, and the title would pass to the purchaser. If no such title could pass, then it is because the land is not liable to the tax; and the treasurers of the counties have no right to assess it for that purpose.
>
> "But when the United States parts with her title, she has parted with the only means which that section of the statute gives for securing the payment of these costs.
>
> "It is by retaining the title that the payment of costs of survey is to be enforced. And so far as the right of

the State to tax the land is concerned, we are of opinion that when the original grant has been perfected by the issue of the patent, the right of the State to tax, like the right of the company to sell the lands, has become perfect." (Italics supplied.)

The same question arose in Northern Pacific Railway Company v. Rockne, supra. The previous cases were followed, the Court saying:

"Again, it is said that, since the road was built before this tax was levied and the company had earned the land, its equitable title was complete, and, according to the decisions of this court, it was subject to taxation. The same point was urged in Railway Co. v. Prescott. But the court said that 'this doctrine was only applicable to cases where the right to the patent is complete, the equitable title fully vested, without anything more to be paid or any act to be done going to the foundation of the right.' But it added, in that case, that two important acts remained to be done, the failure to do which might wholly defeat the company's title. One of these was payment of the costs of surveying. It may be well to restate the grounds on which this decision rests. The United States made a magnificent grant to this company of lands equal in quantity to forty or fifty thousand square miles, an area as large as an average state of the Union. It thought proper to require of the grantee the payment of the costs of making the surveys necessary to the location and ascertainment of these lands. To secure the payment of those expenses, it decided to retain the legal title in its own hands until they were paid. The government was, as to these costs, in the condition of a trustee in a conveyance to secure payment of money. But, if the land was liable to be sold for taxes due to

state, territorial, or county organizations, this security would be easily lost. No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose jurisdiction it is done. If not assessed by direct act of the legislature itself, it must, to be valid, be done under authority of a law enacted by such legislature. *A valid sale, therefore, for taxes, being the highest exercise of sovereign power of the state, must carry the title to the property sold, and if it does not do this, it is because the assessment is void.*

"It follows that, if the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the costs of surveying these lands. If, on the other hand, the sale would not confer such a title, it is because there exists *no authority to make it.* At all events, the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of her right to them until these costs are paid. We are aware of the use being made of this principle by the companies, who, having earned the lands, neglect to pay these costs in order to prevent taxation. The remedy lies with congress, and is of easy application. If that body will take steps to enforce its lien for these costs of survey, by sale of the lands or by forfeiture of title, the treasury of the United States would soon be reimbursed for its expenses in making the surveys, and the states and territories, in which the lands lay, be remitted to their appropriate rights of taxation. The courts can do no more than declare the law as it exists." (Italics supplied.)

This Court held in Irwin v. Wright, supra, that a homestead entryman had no interest in lands acquired under the Homestead Act which were subject to taxation by the State of Arizona where the entryman had fulfilled the requirements of the Homestead Act but had not performed the additional conditions required by the Reclamation Act and the regulations of the Secretary of the Interior issued pursuant thereto, such as payment of installments of water charges. This Court recognized the limitation on the power of the state to interfere with the disposition of Federal lands and reaffirmed and readopted its rule as established in the decisions cited above, in this language:

> "The rule established by the decisions of this court is that, by virtue of its sovereignty and the constitutional power of Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, no state can tax the property of the United States within its limits. This was recognized and enforced by the Enabling Act of June 20, 1910 (36 Stat. 557), under which Arizona was, on February 14, 1912, admitted to the Union, for that act contained an express declaration that lands and property belonging to the United States or reserved for its use were exempted from taxation. * * * An exception to this principle, or rather its nonapplication, is recognized where the government has by final certificate parted with the equitable title to a person subject to state taxation, and retains only the legal title by its delay in issuing the patent. *Not until the equitable title passes can the state tax the entryman*, except in case of mining claims (the reason for which we shall presently consider), and in cases in which express authority to tax is given in the statute. * * * (Italics supplied.)

"The county authorities in this case were in error in supposing that an equitable title passed from the government to the entrymen here, when the latter had fulfilled the requirements of the Homestead Act. Had their entries been controlled solely by that act, they would have been right. But, as we have seen, their entries were made under that act as supplemented and qualified by the Reclamation Act; and the latter expressly entails on such entrymen additional conditions which must be performed before an equitable title or a right to a patent is secured."

The Supreme Court of the State of Minnesota in its opinions in these present causes has shrugged away these decisions of the United States Supreme Court and has attempted to distinguish them from cases in which a contract of purchase has been entered into between the Government on the one hand as the seller and an individual on the other hand as the buyer. In the cases cited above, heretofore determined by this Court, the contract was expressed in effect in the Act of Congress itself. In the cases which are now before the Court, the contract is expressed in a written instrument executed by the Director of Procurement under authority of the Act of Congress and pursuant to the Act of Congress. In each instance, Congress is exercising its authority to dispose of Federal lands and is prescribing the conditions upon the performance of which a patent or a deed, as the case may be, will be given.

In the decisions of the lower court, the agreement between the United States of America and S. R. A. 's treated the same as a contract for deed between individuals. Reasoning from this premise, the lower court determined that the equit-

able title vested in S. R. A. with the bare legal title remaining in the Government as security for payment of the purchase price citing state court decisions relating to such contracts for deed to sustain its conclusion.

That Court has cited as authority for its conclusions L. 1907. C 328 Sec. 1, now Minn. St. 1941, Sections 287.01, 287.02, 287.03, 287.04 (R. 32-33). The Court did not deem it necessary to point out that these sections have to do *only with the mortgage registry tax* of the State of Minnesota. We have set out so far as essential, in the appendix, the original enactment with the Legislative title. It will be observed that "an executory contract for the sale of land * * * shall be deemed, *for the purposes of this act*, a mortgage of said land for the unpaid balance of the purchase price." Yet it is largely upon the language of this statute, which is limited in its scope to the mortgage registry tax, that the decisions of the lower court are based.

The agreement here involved is something other than a contract for deed between individuals. It is an agreement entered into by the Director of Procurement under authority granted by an Act of Congress prescribing that certain specified terms and conditions must be met and performed before the United States will be divested of any of its title or ownership in the lands which are the subject of the agreement.

Other courts have readily perceived the similarity existing between the railway grant cases, the homestead entrymen cases and cases such as these which are now before the Court for review. In the State Court decisions in Mint Realty Co. v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130,

Copp v. State, 90 W. Va. 444, 71 S. E. 580, A. B. R. Corporation v. City of Newark, 35 Atl. 2d 473, People v. Burke, 142 N. E. (N. Y.) 320 and 222 N. Y. S. 882, in the decision of the Circuit Court of Appeals for the Ninth Circuit in Lincoln Co. v. Pacific Spruce Corporation, 26 Fed. 2d 435, and in the U. S. District Court decision in U. S. v. City of Milwaukee, 100 Fed. 828, the precise situation to be considered in this case was presented and in each case it was held that the land in question was not subject to taxation so long as legal title remained in the United States until all conditions required to be performed by the purchaser, including full payment of the purchase price, had in fact been performed.

Textwriters generally have accepted the conclusions reached in these decisions as law; the precise proposition which we maintain is set forth in 51 Am. Jur. (published in 1944) at Page 285 as follows:

> "If land once owned and used by the United States for governmental purposes is sold to private persons pursuant to an Act of Congress and the legal title retained to secure the future payment of any part of the purchase money, it is not liable to taxation by the state or by any of the state's governmental agencies so long as the lien in favor of the United States remains unsatisfied."

Until the first decision in the cases here sought to be reviewed, no contrary opinion had ever been written by a court of final jurisdiction. The point was settled. S. R. A., the purchaser under the contract in these causes, was justified in assuming from this unanimity of opinion that such would continue to be the law. The only decisions to the contrary

known to Petitioner are the S. R. A. cases now before the Court for review and the case of Ken Realty Company v. Johnson, 138 Fed. 2d 809 (1943, decided by the U. S. Circuit Court of Appeals for the Fifth Circuit).

In the case of United States v. City of Milwaukee, 100 Fed. 828 (1893), pursuant to Congressional authority, the Secretary of the Treasury sold the federal building in Milwaukee to Gates for a purchase price of $256,000.00, one-fourth to be paid in cash and the baiance in three equal annual installments plus interest. The government agreed to convey the title by quitclaim deed to the purchaser upon full payment of the purchase price, and it was agreed that the government occupy the building until the completion of the new federal building. When one-half of the purchase price had been paid, the City and County of Milwaukee levied and sought to collect taxes upon the property. This the Court enjoined, saying:

> "* * * Here there remains one-half of the total sum now due and unpaid. In the judgment of the court, these facts exempt this property from taxation. It may be that the purchaser may not complete his payments, in which case the title will remain in the United States of America. And so long as the government has a monetary interest in the property, retaining the legal title, the property is the property of the United States, so far as the question of taxation is concerned. It is true, the government holds the title in trust for the purchaser, so far as he has made payments; but that is liable to be extinguished by forfeiture for non payment of the retnainder, and until the purchase price of the property has been fully paid, and the whole equitable interest in the property vested in the purchaser, and

> nothing remains but for the United States to issue its patent pursuant to the agreement, in the judgment of the court that property is not subject to state taxation. * * * "

Copp v. State, 69 W. Va. 444, 71 S. E. 580, 35 L. R. A. (N. S.) 669 (1911) involved the sale of an old post office, as does the case now before this Court. There the Secretary of the Treasury of the United States, in 1908, sold the old customhouse and postoffice lot and building in Wheeling, West Virginia, to C. H. Copp and his associates at public auction for $118,500.00. By the terms of the sale, one-fourth of the purchase price was payable in cash and the balance in one, two and three years, with interest, the government retaining title until the full purchase price should be paid, and then to make a quitclaim deed to the purchasers. The State levied taxes upon the property for the year 1909 and by appropriate proceedings the purchasers challenged the right of the state to tax the property. The West Virginia Supreme Court of Appeals held that the property could not be taxed by the state as long as any portion of the purchase price remained unpaid. The court said:

> "The legal question which the record presents is: Has the United States government such an interest in the property as entitles it to be exempt from taxation by the state for the year 1909? It has the legal title and a vendor's lien upon it for three-fourths of the purchase price. None of the deferred payments were due when the taxes for that year were assessed. Do these facts not show that the government has such an interest in, or claim upon, the property, as will exempt it from state taxes? Section 3, Chap. 1, Code 1906, expressly exempts the property in question from all

taxes 'so long as the United States shall be the owner thereof.' But the question must be decided independent of the statute, for the reason that no state has the power to tax any of the agencies of the United States government without its consent. We must be governed by the decisions of the Supreme Court of the United States, because the rule announced by it is the supreme law of the land in this question. * * *"

The court then reviewed a number of United States Supreme Court decisions and concluded:

"* * * In view of these decisions, we are bound to hold that the land purchased of the United States by C. H. Copp and his associates is not liable for state, county or district taxes, so long as the United States has any claim upon it for any portion of the purchase money. If it were subject to taxation, it would also be liable under our statute law to be sold for their non-payment, and in such case, if not redeemed, complete title to the entire interest in the land would pass to the tax purchaser. Under the West Virginia statute, it is not alone the interest of Copp and his associates in the land that is taxed, but it is the entire interest and estate therein on which taxes are assessed, and to suffer it to be taxed, so long as any portion of the purchase price remains unpaid, might operate as a serious embarrassment to the government in the enforcement of its claim for the purchase money. * * *

"We do not think the fact that Copp and others have not the legal title to the land would affect the question of its taxability by the state, provided they were the complete equitable owners, and were in a position to demand a conveyance; but we are clearly of the opinion that, according to the decisions herein cited, the state has no right to tax the land, while the United

States government has any claim upon it for any portion of the purchase money. * * *"

In the case of Lincoln County v. Pacific Spruce Corporation, 26 Fed. (2nd) 435 (C. C. A. 9th Circuit, 1928) the United States Spruce Corporation, as vendor, entered into a contract in 1920 with the Pacific Spruce Corporation, as purchaser, to sell real property in Lincoln County, Oregon. By the terms of the contract, the purchase price of $2,000,000.00 was payable in installments and title was to remain in the vendor until the full purchase price was paid and the other terms and conditions of the contract fully complied with by the purchaser. The vendor, United States Spruce Corporation, was an instrumentality of the United States and enjoyed the tax immunity of the United States. In 1926, when approximately one-half of the purchase price had been paid, Lincoln County imposed a tax on the estate, title and interest of the purchaser in the property covered by the contract, except the paramount interest of the United States, and the County threatened to impose a like tax for 1927. A suit was then instituted by the purchaser to cancel the 1926 tax and to restrain the imposition of a like tax in 1927.

The Circuit Court of Appeals for the Ninth Circuit affirmed a decree favorable to the plaintiff and held that neither the land nor the interest of the purchaser was taxable by the state until the entire beneficial and equitable title to the property should be vested in the purchaser and the consideration fully paid. The court said:

"It is well settled, of course, that when an entryman or purchaser from the United States has fully complied

with all the requirements of law or his contract of purchase, and nothing remains to be done but the issuance of a patent or the execution of a deed, the government becomes a mere naked trustee of the legal title, and the property is subject to state taxation. But it is equally well settled that, before lands granted or sold by the United States can be taxed by the states as the property of the beneficial owner, a perfect equitable title must be vested in the grantee or purchaser, and the consideration and other conditions of the grant or sale must be fully paid and performed. As long as the government retains the legal title as security for the payment of any part of the purchase money, or to secure the performance of any other conditions of the grant or sale, the land is not subject to taxation by the states."

We call the attention of the Court particularly to the case of A. B. R. Corporation v. City of Newark et al, decided by the Supreme Court of New Jersey, January 19, 1944, 131 N. J. L. 147, 35 A. 2d. 473, and the same case on appeal, decided by the New Jersey Court of Errors and Appeals on April 19, 1945, 133 N. J. L. 34, 42 A. 2d. 296.

This case is almost "on all fours" with the cases under review and involved the question of the taxability of the old Post Office and Court House site in Newark, New Jersey, which had been sold by the United States Government on January 27, 1941, under a deferred payment contract by which the first installment of thirteen annual installments became due February 27, 1945. The contract provided that upon full compliance with all the terms of the agreement, title deed was to be delivered to the purchaser, or his nominee, on February 27, 1951, when a purchase money mortgage was

to be given to secure the balance of the purchase price. Possession of the premises was delivered to the purchaser in 1941. The City undertook to tax this property for the years 1942 and 1943. The Supreme Court of New Jersey held that the property was not taxable, that before the property would be taxable, the purchaser must have performed all the terms of the contract entitling him to a conveyance of the legal title. Upon appeal to the New Jersey Court of Errors and Appeals, that Court affirmed the judgment of the Supreme Court. The Court of Errors and Appeals affirmed the judgment for the reasons expressed in the opinion of the Supreme Court. Since the appellate court's opinion is very short, we set it out in full:

"PER CURIAM:

The judgment is affirmed for the reasons expressed in the opinion of Mr. Justice Porter for the Supreme Court.

The opinion says: 'Certainly Bratter had no equitable estate in the property which would justify any such assessment to be taxable. His equitable title must be vested and perfected by full performance of the contract.' In our view, the question is whether all the conditions precedent to a conveyance of the legal title have been fulfilled by the vendee. In that event, the Government holds the bare naked title and a nominal interest, and the whole value is taxable to the equitable owner. Until all the conditions precedent have been performed, the lands are the property of the Government and exempt from taxation by the state. This is the principle of the case of New Brunswick v. United States, 276 U. S. 547, 48 S. Ct. 371, 72 L. Ed. 693, reiterated in the case of United States v. County of Allegheny, 322 U. S. 174, 64 S. Ct. 908, 88 L. Ed. 1209.

> The common law doctrine of equitable conversion upon the execution of a contract for the sale of land is not applicable. *Until the vendee of a contract for the sale of land owned by the Government is entitled to a conveyance of the title by the performance of all conditions precedent, his mere possessory right is not taxable by the state.*" (Italics supplied.)

In Ken Realty Company v. Johnson, 138 Fed. 2d 809, the United States Circuit Court of Appeals reached a novel conclusion, holding that the purchaser under such a contract as is involved here which reserved title in the United States had an interest subject to taxation under Alabama laws, the value of the interest being measured each tax year by the value of the whole property diminished by the amount of the unpaid purchase money.

In United States v. Allegheny County, 322 U. S. 174, 64 Sup. Ct. Rep. 908, decided May 1, 1944, this court invalidated the imposition of a state *ad valorem* tax on real estate to the extent that it was based on the value of machinery owned by the Federal Government and leased to Mesta Machine Company where it became a part of the real estate under Pennsylvania taxing law.

Mesta Machine Company was engaged in the manufacture of large field guns for the United States under a cash-plus-a-fixed-fee contract in which taxes levied against the Company were reimbursable cost items. Mesta owned a plant with some machinery. The Government leased machine tools which were transferred to Mesta from other production locations. Mesta was required to manufacture or purchase certain other machine tools which after inspection and acceptance became the property of the United States and in

turn were leased to Mesta. The machinery owned by the Federal Government was affixed to the realty in such a way that it could be removed without injury to the premises.

Allegheny County, Pa., levied a real property *ad valorem* tax against Mesta's mill and in valuing the real estate for the purposes of the assessment included the value of the machinery owned by the Government. The Supreme Court of Pennsylvania in U. S. v. Allegheny, 32 Atl. 2d 236, held that the tax was levied on the mill as an entity and that since the record showed that title to the land was in the Mesta Company, the assessor was not obliged to go further; that under the state law, regardless of who held the title to it the machinery constituted a part of the mill for purposes of assessment and was properly assessed as real estate; that property of the United States was beyond the pale of state taxation; but that this assessment was not against the United States but against Mesta, which was operating the mill for private purposes and that the tax was valid.

This Court considered the real controversy to be, "especially in view of recent decisions" whether the taxing authorities of Pennsylvania had infringed the admitted immunity of possessions, institutions and activities of the Federal Government from any form of state taxation in the absence of express congressional consent.

It was held by this Court that an *ad valorem* tax is a tax against property not persons and its procedures more nearly in rem than in personam; that it is predicated upon jurisdiction of the property rather than of its owner and that where the machinery was separately valued and assessed and included in the value of the land, the tax was an *ad*

valorem tax on the machinery and therefore on property owned by the United States.

It was further held that the state law was not decisive of the question of title. The Court had this to say:

> "Procurement policies so settled under federal authority may not be defeated or limited by state law. The purpose of the supremacy clause was to avoid the introduction of disparities, confusions and conflicts which would follow if the Government's general authority were subject to local controls. The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any state."

The case of United States v. Board of Commissioners, 145 Fed. 2d 329, certiorari denied January 29, 1945, 65 Sup. Ct. Rep. 563, 89 L. Ed. 478, involved the immunity from taxation of lands held in trust by the United States for certain Indian tribes. The following language of the Circuit Court of Appeals is noteworthy:

> "These lands were acquired with funds belonging to the Indians; and under section 6, supra, the title is held in trust for the Tribes. But the legal title is in the United States. Generally, the possession of the legal title by the United States determines the fact and right of ownership in respect of immunity from taxation under state authority. Wisconsin Railroad Co. v. Price County, 133 U. S. 496, 10 S. Ct. 341, 33 L. Ed. 687. And *where the legal title is in the United States, lands are not subject to state or county taxes* even though

the United States holds them in trust for an Indian or a tribe." (Italics supplied.)

The Supreme Court of Minnesota rests its decision in part upon the authority of City of New Brunswick v. United States, 276 U. S. 547, 48 Sup. Ct. 371, 72 L. Ed. 693. In that case, it appeared that the United States Housing Corporation as an instrumentality of the United States Government acquired title to property in the City of New Brunswick during the first World War. Upon the conclusion of the war, Congress authorized the Housing Corporation to sell and convey its property, but provided that no sale or conveyance on credit should be made without reserving a first lien for the unpaid purchase money. The Housing Corporation entered into contracts for the sale of various lots providing for the purchase price to be paid in monthly installments, a deed to be issued by the Housing Corporation upon payment of 10 per cent of the purchase price, the purchaser to execute a mortgage back for the balance of the purchase money. The purchasers took possession of the property and paid the 10 per cent entitling them to a deed. Because the city in the meantime had assessed taxes against the property, the Housing Corporation refused to execute deeds to the purchasers and the latter, of course, did not give the mortgages contemplated by the contract. While the Housing Corporation continued to hold legal title and after the 10 per cent of the purchase money had been paid, the city assessed the lots for taxation to the purchasers. This Court held that the purchasers had become the equitable owners of the lots, that in equity, the situation should be considered as though the contracts had been performed by a conveyance from the Housing Corporation to the purchasers

and the giving of mortgages by the purchasers to the Housing Corporation and that the taxes were valid and could be enforced by sales of the interests of the purchasers if such sales were authorized under New Jersey law and if they were made expressly subject to the rights, liens and interests of the Housing Corporation. The Court said:

> "It is unquestioned that so long as the corporation held title to the lots as an instrumentality of the United States and solely for its use and benefit, they were not subject to taxation by the city. Clallam County v. United States, 263 U. S. 341, 344, 68 L. Ed. 328, 331, 44 Sup. Ct. Rep. 121. But after the purchasers had made the payments entitling them to receive deeds to the lots, the corporation ceased to hold title solely for the United States, and held partly for the purchasers, who had become the equitable owners of the property and entitled to conveyance of the title subject to their obligation to execute mortgages securing the payment of the balance of the purchase price. In equity the situation was then the same as if the corporation had conveyed title to the purchasers, as owners, and they had mortgaged the lots to the corporation to secure the unpaid purchase money. As between the corporation and the city, the taxability of the lots is to be determined as if both the deeds and the mortgages had been executed; that is, as if the corporation, while conveying the legal title to the purchasers, had retained a mortgage lien to secure the balance of the purchase price.

The New Brunswick case is in accord with the cases previously decided by this Court as well as with those decided by lower Federal courts and by state courts. The purchasers had performed all conditions and had paid the consideration which entitled them to a conveyance. This Court viewed

the situation as though legal title had actually vested in the purchasers. It constitutes an affirmation of the previous decisions of the Court since the purchasers were lawfully entitled to have the legal title to the property vested in them.

The decision in the case of Lincoln County v. Pacific Spruce Corporation, 26 Fed. 2d 435, makes it clear that the New Brunswick case is not a departure from the previous decisions of this Court on the subject of tax immunity, saying:

> "The recent case of City of New Brunswick v. United States, 48 S. Ct. 371, 72 L. Ed.——, decided by the Supreme Court April 9, 1928, is not to the contrary. In that case the Housing Corporation entered into contracts for the sale of lots, the stipulated price to be paid in installments. The contracts provided that the vendor should execute special warranty deeds for the property upon the payment of 10 per cent of the purchase price, and that the purchasers should execute and deliver a note or notes, with mortgages on the property to secure the balance of the purchase price, in accordance with the terms of the contracts of sale. The purchasers paid the 10 per cent of the purchase price as agreed, and thus became entitled to deeds; but the Housing Corporation refused to execute the deeds, because of some controversy over taxes assessed against the property by the city. Under these facts, the court held that the property was subject to taxation, but that the lien of the vendor for the unpaid purchase price was superior to the tax lien, because of a provision in the statute authorizing the sale: 'That no sale or conveyance shall be made hereunder on credit without reserving a first lien on such property for the unpaid purchase money.'
>
> "It will thus be seen that the purchasers had complied with all the conditions of the contract, so as to

entitled them to deeds, and the case was therefore controlled by the general rule to which we have referred. The court did not hold, as we understand it, that the property was subject to taxation by the city simply because the purchasers had paid 10 per cent of the purchase price under the executory contracts of sale. If it did so hold, the decisions would seem to be contrary to earlier decisions of the same court and to the other authorities we have cited."

The New Brunswick case is akin to the decision of this Court in Baltimore Shipbuilding Company v. Mayor, 195 U. S. 375, 25 Sup. Ct. 50, where it was held that the real estate of the Shipbuilding Company was subject to taxation by the City of Baltimore. The title to the property was not in the United States but in the Shipbuilding Company, with a condition subsequent of defeasance predicated upon a duty on the part of the company to allow Government vessels to put into dry dock for repairs. The Shipbuilding Company undertook to evade the payment of local taxes on the ground that the United States had an equitable interest in the title to the property, claiming that the case came within the general rule of taxation of property belonging to the Federal Government. This Court properly held that the fee was in the Shipbuilding Company and that the property was subject to taxation.

In the case of Irwin v. Wright, 258 U. S. 219, 43 Sup. Ct. 293, supra, this Court distinguished a case analogous to the Baltimore Shipbuilding Company case and the New Brunswick case. The case distinguished was United States v. Canyon County, 232 Fed. 985, where a patent had issued conveying a fee in land subject to a lien of the United States

superior to all others for future installments of water rents. This Court said:

> "The patent vested the full legal title in the entryman. The fact that a lien was reserved on the face of the patent prior in right to all other liens for installments of water charges to fall due in the future did not prevent this and the giving patents indicated an intention on the part of the Government that it should be land of the entrymen and of course it became taxable as such. Baltimore Shipbuilding Company v. Mayor et al, 193 U. S. 375, 25 Sup. Ct. 50, 49 L. Ed. 242."

III. S. R. A. Has No Equity Which Is Subject To State Taxation.

The Assessor in listing the premises in the cases now before this Court assessed them in the name of "S. R. A. Incorporated subject to fee title remaining in the United States of America." The name under which a parcel of land is assessed is of no significance under Section 280.06 Minnesota Statutes (appendix). The State taxing athorities have contended and the Minnesota Supreme Court has determined that the Assessor by this act assessed the equity or the equitable interest of S. R. A. in the premises and that the superior right or title of the United States is unaffected. We shall endeavor later in this brief to demonstrate that no such interest if it exists can be assessed or taxed under the taxing statutes enacted by the Minnesota Legislature. But, assuming statutory authority for the taxation of interests, no taxable interest exists under the contracts here being considered until all conditions have been performed by the purchaser. The Supreme Court of the United States has ruled directly that the equity of the vendee may not be as-

sessed and taxed, in the case of Irwin v. Wright, 258 U. S. 219, 42 Sup. Ct. 293, where Chief Justice Taft said:

> "It is argued that it is not government property which is sought to be taxed here before final certificate, but only the interest of the entrymen. In the case at bar, the taxes were in the first instance assessed against the land, but later the board of supervisors changed the form of the assessment, so as to insert the word "equity" in the record. The power of the supervisors, under the Arizona statutes, to order such a change in past assessments is challenged. We do not think it necessary to decide this. It is enough to say that the entrymen did not have the equitable title until they received the final certificate, and their interest in the government's land, until that issued was for the reasons given, not taxable. Whether an interest like that of the entrymen in land not belonging to the government would be taxable property, we have no occasion to consider."

And in the case of Flint Realty Company v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130, it is said:

> "The attempt is made to take this case out of the general rule by showing that the United States by article of agreement had sold and agreed to convey the property to the appellee, and this company being in possession, receiving rents, and exercising all rights of ownership, has such an equitable title as to subject the property to taxation in its name. This contention would be perfectly sound if the rule of taxation applicable thereto could be determined by Pennsylvania law. The difficulty, however, is that in the present case our state law has no application, and it becomes necessary to look to the decisions of the federal courts in order to determine the rights of the parties."

In Lincoln County v. Pacific Spruce Corporation, 26 Fed. 2d 435, supra, the county imposed a tax upon the estate, right, title, and interest of the purchaser, except the paramount interest therein of the United States.

The Court had this to say about equitable titles and equities:

> "It is sometimes said that the purchaser under an executory contract of sale is the owner in equity, even before the payment of the purchase price; but within the rule we are now discussing the equitable title means only such as vests in the purchaser upon payment of the purchase price in full, leaving nothing but naked legal title in the vendor, for it would seem that the equitable title of the homesteaders in the case to which we have referred was superior to the rights of the purchaser in this case, where the title was reserved by the vendor until the purchase price was fully paid and all other conditions of the contract fully complied with. In other words, there was reserved, not only the naked legal title, but the equitable title as well, and the final test is: Has the government parted with everything except the naked legal title? If so, the property is subject to taxation; otherwise, it is not."

The idea of taxability of the so-called "equitable ownership" of the purchaser is refuted by the Court in A. B. R. Corporation v. City of Newark, 133 N. J. L. 34, 42 A 2d 296, in this language:

> "Until the vendee of a contract for the sale of land owned by the Government is entitled to a conveyance of the title by the performance of all conditions precedent, his mere possessory right is not taxable by the state."

IV. Separate Interests In Land Are Not Taxable Under Minnesota Statutes.

Where a Federal right is concerned, the Supreme Court of the United States is not bound by the characterization given to a state tax by the state courts, or relieved by it from the duty of considering the real nature of the tax and its effect upon the Federal right asserted. Carpenter v. Shaw, 280 U. S. 363, 50 Sup. Ct. 121, 74 L. Ed. 478. U. S. v. Allegheny County, 322 U. S. 174, 64 Sup. Ct. 908.

The Supreme Court of Minnesota has assumed that equities or equitable interests are taxable without discussing the question or citing any statutory enactments to that end. The power of taxation is a legislative function and taxes can be levied and collected only under statutory authority. If the legislature fails to provide for the taxation of separate interests in land the Courts are not authorized to supply the omission and to adjudge the separate interests subject to taxation. City of New Orleans v. Stemple, 175 U. S. 309, 44 L. Ed. 174, 20 Sup. Ct. 110. In the first opinion (R. 31), the Minnesota Court recognized the validity of the rule for it expressly states that "it is for the Legislature to devise the mode, form and extent of taxation to be imposed." This being true it follows that taxes can be imposed only under statutory authority and in the manner provided by law. Neither the taxing authority nor the Minnesota Supreme Court has cited any statutory or legislative authorization for the taxation of any interest less than the whole.

The attempt of the Court to usurp this legislative prerogative and to itself create a new object of taxation is an interference with this exclusively legislative function and results

in the violation of S. R. A.'s rights under the 14th Amendment to the Constitution of the United States. Frick v. Pennsylvania 268 U. S. 473, 45 Sup. Ct. 603. The assessor cannot determine what shall and what shall not be taxed. That is the function of the Minnesota legislature, and unless it has so provided, the interest of S. R. A. in the premises affected, even if the premises are not immune from taxation as being the property of the United States, cannot be assessed and taxed separately so as to make the assessment valid.

Section 272.03 Minnesota Statutes 1941 (appendix), defines real property for the purposes of taxation, and includes therein "the land itself, and all buildings, structures, and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining." All interests are included in the assessment of the land itself and no assessment can be made upon this property, unless it is against the interest of the United States. There is no statutory authority whatsoever for the assessment of an interest less than the entire fee estate.

Section 273.19, Mason's Minnesota Statutes, (appendix) provides that "property held under a contract for the purchase thereof, when the property belongs to the state, or to any religious, scientific, or benevolent society or institution, incorporated or unincorporated, or to any railroad company or other corporation whose property is not taxed in the same manner as other property, or when the property is school or other state lands, shall be considered, for all purposes of taxation, as the property of the person so holding the same."

Obviously, the purpose of the section is to make taxable that which was not previously taxable. The Legislature did not subscribe to the conclusions reached by the Minnesota

Supreme Court. It expressly provides that "for purposes of taxation" the property shall be considered as that of the vendee indicating at least, that without the statute, it would be the property of the Vendor.

The Court will observe, as further evidence that the State of Minnesota does not consider the real estate in this case as taxable, that property held under a contract for the purchase thereof when such property belongs to the United States has not been included in the foregoing statute. And properly so, for under the cases cited, and under the provisions of our State Constitution, such a provision would be void. It may further be said that this section is the only statute presuming to give authority to tax property to the purchaser under a contract. Since the statute specifically enumerates the circumstances to which it shall apply, and the instant case is not covered, the property here, in any event, cannot be taxed "as the property of the person so holding the same." Of course, it is our contention that even if the United States were included in this statute, the property still could not be taxed as the property of the person holding the same, because in truth and in fact; it is the property of the United States of America and is exempt from taxation by the State of Minnesota.

Section 273.19 gives no authority to assess and tax the equity of the vendee. Even under this statute, the entire property is taxed. And the tax lien arising is valid against the vendor upon cancellation by it of the vendee's rights under the contract. See State vs. County of Washington, 207 Minn. 530, 292 N. W. 204.

So that if it did cover land sold under contract by the United States, the statute would be unconstitutional as vio-

lating Article 2, Section 3 of the Constitution of the State of Minnesota, since the tax lien would be superior to the rights of the United States.

The situation here presented has been recognized by the Legislature of the State of Minnesota as giving no basis for levying a tax upon the real estate, for under the personal property taxing statutes, Mason's Minnesota Statutes, Section 272.03, it is provided that "Personal property for the purposes of taxation shall be construed to include all improvements made by others upon lands the fee of which is still vested in the United States."

From this statute it appears that the Legislature has long recognized the immunity as claimed here and has enacted this provision in an effort to reach the improvements made on land purchased from the United States of America prior to the time when the land itself may be taxed by the State.

If the assessment of tax here attempted is valid the State must, of necessity, have a lien or a right which can be enforced under the existing statutes. It then becomes pertinent to inquire as to the nature of the title which the State may sell at a tax sale under this assessment. Can it sell free and clear of the rights of the United States? Clearly it cannot if by the terms of the assessment the tax is subordinate to the United States. But can there be a tax sale subject to the rights of the United States?

Until the full purchase price is paid, the United States has an interest in these lands, for the enforcement of which certain remedies are afforded to it. The taxes levied by the State are on the land and not on the interest of the purchaser, State vs. Washington County, 207 Minn. 530 supra. The entire proceeding is one in rem, and the tax is on the land

regardless of the guise adopted to conceal the tax levy or provisos or conditions recited. The tax sales under State law, if valid, would convey the land and extinguish the lien and rights of the United States. The State law makes no provision for selling the interest of the vendee under a contract nor for making tax sales subject to the right of the United States.

A decree not adjudging the taxes entirely void, but determining them inferior to the rights of the United States, and requiring the State in making tax sales and issuing deeds to recite that they were subject to the rights of the United States amounts to writing a new tax law for the State of Minnesota.

In Hacklander vs. Parker, 204 Minn. 260, 283 N. W. 406, the court said:

> "The purchaser at a tax sale derives his title not from the former owner of the land but from the state. A tax title is a new and original grant from the State as sovereign of title in fee, which is paramount as against the world and which supersedes and bars all other titles, claims and equities."

A tax assessment can be of no greater force or validity than the right and power to enforce its collection. The United States Supreme Court made this clear in Northern Pacific Railway Company vs. Rockne, supra, stating:

> "No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose jurisdiction it is done. If not assessed by direct act of the legislature itself, it must, to be valid, be done under authority of a law enacted by such legislature. *A valid sale, therefore, for taxes, being the highest ex-*

ercise of sovereign power of the state, must carry the title to the property sold, and if it does not do this it is because the assessment is void.

"It follows that, if the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the cost of surveying these lands. If, on the other hand, the sale would not confer such title, it is because there exists no authority to make it. At all events the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of her right to them until these costs are paid." (Italics supplied.)

It is significant that the statutes of the State of Minnesota on this subject indicate complete agreement with the foregoing expressions of the United States Supreme Court. Section 279.16, Minnesota Statutes provides the form of judgment in tax sales by the state, and requires that the judgment contain a recital that "the amount of the taxes, penalties, and cost to which, as hereinbefore stated, each of said parcels of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim or lien, of whatever nature in law or equity, of every person, company, or corporation, whatsoever; and it is adjudged that unless the amount to which each of said parcels is liable be paid, each of said parcels be sold, as provided by law, to satisfy the amount to which it is liable."

Section 280.03 recites the form of certificate to be issued to the purchaser at a tax sale and provides that "if the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein in fee simple without any other act or deed whatever."

To the same effect is Section 280.11. And Section 280.25 providing for the issuance of a deed in the name of the State, reads:

> "* * * And every such deed shall vest the grantee with complete title to such lands subject to the defenses that the tract or parcel was exempt from taxation or that the taxes for which such tract or parcel was sold at said tax sale had been paid."

V. By Including the Interest of the Government In the Valuation of the Land, the State Has Subjected That Interest To Taxation.

In determining the value of the land for the purposes of taxation, the value of all interests was embraced by the Assessor, including the interest of the United States (R. 46, 86-87). The property in question was assessed and taxed as all other real property in the County and without deduction of any amount due the United States under the contract for deed. In the Mesta case (United States v. Allegheny County, supra), this Court held that the same result was reached by including the value of the machinery owned by the Government in the assessment of the land as would have been reached if the machinery were taxed in form. "The substance of this procedure" in the language of this Court "is to lay an ad valorem general property tax on property owned by the United States." This Court further said in that decision "The procedure of the Assessor is consistent with no other theory than that the machinery itself was being assessed and taxed exactly as land was being assessed and taxed. * * * We discern little theoretical difference and no practical difference at all between what was

done and what would be done if the machinery were taxed in form."

If we assume that an equity exists which is subject to taxation by the State of Minnesota and that the equity is taxable under Minnesota Statutes, it is still clear that the Assessor has erred in including for the purposes of taxation the value of the interest of the United States in the property. If the foregoing assumptions are correct, then the case should be governed by the rule set forth in Ken Realty Company v. Johnson, 138 Fed. 2d 809, that the value of the interest of the purchaser which is to be taxed is to be measured each tax year by the value of the whole property diminished by the amount of the unpaid purchase money.

VI. The Purchaser Can Assert the Claim That the Premises Are Immune From Taxation.

The Supreme Court of the State of Minnesota has advanced as one of its reasons why the tax should be sustained that S. R. A. is not in a position to champion the Federal Government's tax immunity (R. 37).

The tax against the premises here involved is invalid because there exists no authority on the part of the State of Minnesota to levy, assess or collect it. The Petitioner, as the purchaser of the premises, can assert the immunity and prevent a tax sale of the premises which would have the effect of impeding the United States in the assertion of her right to them until the terms of the contract have been completely performed. This Court in United States v. Allegheny County, supra, expressed the law and the supporting authorities clearly in these words:

"We think, however, that the Government's property interests are not taxable either to it or to its bailee. The "Government" is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed as we have held. But neither he nor the Government can be taxed for the Government's property interest. Rarely does a state or municipality pursue the Federal Government itself. Most of the immunity cases we have been called upon to deal with involved assertion of a right to tax Government property against an individual. In United States v. Rickert, 188 U. S. 432, 23 S. Ct. 478, 483, 47 L. Ed. 532, this Court decided that improvements made upon lands to which the United States held title but which were put in possession of Indians for their benefit remained immune from taxation and that cattle, horses, and chattels purchased with the money of the Government and "put into the hands of the Indians to be used in execution of the purpose of the government in reference to them" were likewise immune from taxation. In Van Brocklin v. Tennessee, 117 U. S. 151, 6 S. Ct. 670, 29 L. Ed. 845, Tennessee attempted to sell for state taxes lands which the United States owned at the time the taxes were assessed and levied, but in which it had ceased to have any interest at the time of sale. There, as here, it was claimed the collection affected only private persons, whose equities in the matter were at least doubtful, and that the United States could suffer no harm. The Court held, however, that the immunity protected the private owner for the tax had been laid against an interest of the Government

which was beyond the reach of state taxing power. See also Irwin v. Wright, 258 U. S. 219, 42 S. Ct. 293, 66 L. Ed. 573; Lee v. Osceola & Little River Road Improvement District, 268 U. S. 643, 45 S. Ct. 620, 69 L. Ed. 1133.

"A state may tax personal property and might well tax it to one in whose possession it was found, but it could hardly tax one of its citizens because of moneys of the United States which were in his possession as Collector of Internal Revenue, Postmaster, Clerk of the United States Court, or other federal officer, agent, or contractor. We hold that Government-owned property, to the full extent of the Government's interest therein, is immune from taxation, either as against the Government itself or as against one who holds it as a bailee."

VII. The Economic Results Of Immunity Are For Legislative Bodies, Not Courts, To Decide.

The Minnesota Supreme Court seems to have been influenced in reaching its conclusions by the economic consequences of immunity. In its first opinion, it said (R 30), "So, at the outset, it would seem to most people that this property and S. R. A.'s use and possession of it should bear its just proportion of the public tax burden" and again (R 38), "here, as much as in that case, S. R. A. should not be allowed 'a windfall' as obviously it would be were its position to be sustained."

We submit that the wisdom or fairness of the law was no more before the Minnesota court here than it was before the courts in the cases cited which establish the applicable rule. Courts have no concern with economic arguments. They present problems exclusively for the people themselves as represented in the law making bodies. Legislatures may

shift the emphasis in response to the force of public opinion. The judiciary will ascertain and declare the legislative will whatever it may be, St. Louis v. Wiggins Ferry Company, 11 Wall. 423, 20 L. Ed. 192.

That principle has been plainly stated by this Court in 1885 in Northern Pacific Railway v. Rockne, supra, in these words:

> "We are aware of the use being made of this principle by the companies, who, having earned the lands, neglect to pay these costs in order to prevent taxation. *The remedy lies with Congress and is of easy application.* If that body will take steps to enforce its lien for these costs of survey, by sale of the lands, or by forfeiture of title, the Treasury of the United States would soon be reimbursed for its expenses in making the surveys, and the States and Territories, in which the lands lie, be remitted to their appropriate rights of taxation. *The courts can do no more than declare the law as it exists.*"

This Court was still of the same opinion in 1944 when the case of United States v. Allegheny County, supra was decided. Allegheny County did not fail to urge the "unfairness" and "injustice" of Mesta's escape from "just taxation." While the considerations underlying the argument reminded the Supreme Court of its "heavy responsibility," they did "hardly provide a guide or alter the usual principles for decisions." The equities of this unfortunate conflict between the United States and one of its most important industrial communities *are not capable of judicial ascertainment or equalization* . . . we can only say that our constitutional system *as judicially interpreted from the beginning* leaves no room for the localities to impose either *compensatory* or re-

taliatory taxation on government property interests. *Their remedy lies in petition to the Federal Congress, which also is their Congress.*" (Italics supplied.)

Obviously, the contract was entered into by S. R. A. in the light of an extensive and authoritative body of case law holding without division of authority, that where the United States sells property under a contract whereby title is reserved in the government until full payment of the purchase price, neither the property itself nor the interest of the purchaser is subject to state taxation until the purchase price is paid in full and the purchaser is entitled to a deed. The price paid by it and accepted by the government was based upon the assumption that these legal conclusions would be followed if litigation ensued. No "windfall" will have been allowed S. R. A. if the law as pronounced by this Court follows the law as established by earlier decisions. If the state decisions are affirmed, however, a "windfall" will have been allowed to the County and State in that they will collect a tax on property previously thought to be immune from state taxation.

The immunity of the Federal Government from taxation by the states has always been and always will be important. Whenever it has been before the courts its importance to the state and municipal governments has been implicit. Every determination of immunity from taxation between governmental units is ultimately beneficial to one and correspondingly detrimental to others.

At the same time we may well keep in mind the fact that usually, as in the present case, the State and municipal governments have received no tax revenues from the Federal lands prior to a sale to a private citizen and there is there-

for no loss or injury, as is suggested by the opinions of the State Court, arising out of the sale of the tax exempt land. Quite the contrary, however, the land is placed in the process of becoming taxable when full legal title vests in the purchaser. But this question cannot be determined and will not be considered in the light of economic effects upon one governmental body in its relation to another.

Without presuming to advance economic arguments, let us inquire whether it may not be in the public interest for the United States to reserve title and to clothe the lands sold with an immunity from local taxation until the sale is complete. That must be the most salutary method of disposing of large Federal holdings which otherwise might never be restored to the tax rolls if they were to be immediately saddled with the burden of local taxation upon the execution of a contract of sale. There is as much weight to this economic argument as to the other and by this purchase agreement and its terms which are clearly on authority from Congress, the United States has said just that.

The economic aspects of such problems are within the province of legislatures and not in that of the courts.

CONCLUSION.

The Minnesota Supreme Court was in error fundamentally in failing to recognize that these cases are controlled by the decisions of this Court as expressed particularly in Railway Company v. Prescott, Railway Company v. McShane, Northern Pacific Railway Company v. Rockne, Irwin v. Wright, and United States v. Allegheny County, supra. The refinements upon which the State Court based its conclu-

sions that these cases can be distinguished have not been apparent to other courts or to textwriters generally. It has been held almost with unanimity that premises sold by the United States under such a contract as is here before the Court is not subject to state taxation until all of the terms required to be performed by the purchaser to entitle him to a deed, including full payment of the purchase price, have in fact been performed.

In one breath, the state court holds that real estate taxation in Minnesota is *in rem*—against the land, not against persons; in the next breath, it holds that persons represented by their respective interests and not the land as a whole are to be taxed. No Legislative authority for such a procedure is noted and none exists. The land itself is the subject of taxation under our statutes. The levy of a tax upon the premises here sold under contract by the United States must be a lien superior to the rights of the United States.

We respectfully submit that the findings and conclusions of the trial court in the first instance (R 16-21) were in accordance with the law and that the judgments of the Supreme Court of Minnesota in these causes should be reversed.

Respectfully submitted,

ROLAND J. FARICY
Attorney for Petitioner
W-1862 First Nat'l Bank Bldg.
Saint Paul, Minnesota.

OTIS, FARICY & BURGER
W-1862 First Nat'l Bank Bldg.
Saint Paul, Minnesota
of Counsel

APPENDIX.

APPLICABLE PROVISIONS OF MINNESOTA STATUTES

272.01 PROPERTY SUBJECT TO TAXATION. All real and personal property in this state, and all personal property of persons residing therein, including the property of corporations, banks, banking companies, and bankers, is taxable, except such as is by law exempt from taxation.

272.03 DEFINITIONS. * * * Subdivision 2. Real Property. For the purposes of taxation, "real property" shall be construed to include the land itself and all buildings, structures, and improvements or other fixtures or whatsoever kind thereon, and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, quarries, fossils, and trees on or under the same.

Subdivision 3. Personal Property. For the purposes of taxation, "personal property" shall be construed to include:

* * * * *

(3) All improvements made by others upon land the fee of which is still vested in the United States, and all improvements, including elevators and other structures, upon lands the title to which is still vested in any railroad company or other corporation whose property is not subject to the same mode and rule of taxation as other property;

* * * * *

272.04 MINERAL, GAS, COAL, AND OIL OWNED APART FROM LAND. When any mineral, gas, coal, oil, or other similar interests in real estate are owned separately and apart from and independently of the rights and interests owned in the surface of such real estate, such mineral, gas, coal, oil or other similar interests may be assessed and taxed separately from such surface rights and interests in such real estate and may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes.

272.31 LIEN OF REAL ESTATE TAXES. The taxes assessed upon real property shall be a perpetual lien thereon, and on all structures and standing timber thereon and on all minerals therein, from and including May first in the year in which they are levied, until they are paid; but, as between grantor and grantee, such lien shall not attach until the first Monday of January of the year next thereafter.

273.01 LISTING AND ASSESSMENT, TIME. All real property subject to taxation shall be listed and assessed every even-numbered year with reference to its value on May first preceding the assessment, and all real property becoming taxable any intervening year shall be listed and assessed with reference to its value on May first of that year. Personal property shall be listed and assessed annually with reference to its value on May first; and, if acquired on that day, shall be listed by or for the person acquiring it.

273.11 VALUATION OF PROPERTY. All property shall be assessed at its true and full value in money. In determining such value, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value

the price for which such property would sell at auction or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract or lot of real property, the value of the land, exclusive of structures and improvements, shall be determined, and also the value of all structures and improvements thereon, and the aggregate value of the property, including all structures and improvements, excluding the value of crops growing upon cultivated land. * * *

273.13 CLASSIFICATION OF PROPERTY. Subdivision 1. How classified. All real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as provided by this section.

* * * * *

Subdivision 9. Class 4. All property not included in the preceding classes shall constitute class four and shall be valued and assessed at 40 per cent of the full and true value thereof.

* * * * *

273.19 LESSEES AND EQUITABLE OWNERS. Property held under a lease for a term of three or more years, or under a contract for the purchase thereof, when the property belongs to the state, or to any religious, scientific, or benevolent society or institution, incorporated or unincor-

porated, or to any railroad company or other corporation whose property is not taxed in the same manner as other property, or when the property is school or other state lands, shall be considered, for all purposes of taxation, as the property of the person so holding the same.

275.01 LEVY IN SPECIFIC AMOUNTS. All taxes shall be levied or voted in specific amounts and the rates per cent shall be determined from the amount of property as equalized by the state board of equalization each year, except such general taxes as may be definitely fixed by law.

275.08 AUDITOR TO FIX RATE. The rate per cent of all taxes, except the state tax and taxes the rate of which may be fixed by law, shall be calculated and fixed by the county auditor according to the limitations in this chapter hereinafter prescribed; provided, that if any county, city, town, or school district shall return a greater amount than the prescribed rates will raise, the auditor shall extend only such amount of tax as the limited rate will produce.

279.16. JUDGMENT WHEN NO ANSWER; FORM; ENTRY. Upon the expiration of 20 days from the publication of the notice and list, the affidavit of publication being filed, the clerk shall enter judgment against each and every such parcel as to which no answer has been filed, which judgment shall include all such parcels, and shall be substantially in the following form:

State of Minnesota)
District Court

ss.

County of.....)
.....Judicial District

In the matter of the proceedings to enforce payment of the taxes on real estate remaining delinquent on the first Monday in January, 19...., for the county of....., state of Minnesota.

A list of taxes on real property, delinquent on the first Monday in January, 19...., for said county of....., having been duly filed in the office of the clerk of this court, and the notice and list required by law having been duly published as required by law, and more than 20 days having elapsed since the last publication of the notice and list, and no answer having been filed by any person, company, or corporation to the taxes upon any of the parcels of land hereinafter described, it is hereby adjudged that each parcel of land hereinafter described is liable for taxes, penalties, and costs to the amount set opposite the same, as follows:

Description. Amount.

The amount of taxes, penalties, and cost to which, as hereinbefore stated, each of such parcels of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation; and it is adjudged that, unless the amount to which each of such parcels is liable be paid, each of such parcels be sold, as provided by law, to satisfy the amount to which it is liable.

Dated this.....day of....., 19.....

.....

Clerk of the District Court,

County of .....

The judgment shall be entered by the clerk in a book to be kept by him, to be called the real estate tax judgment

book, and signed by the clerk. The judgment shall be written out on the left-hand pages of the book, leaving the right-hand pages blank for the entries in this chapter hereinafter provided; and the same presumption in favor of the regularity and validity of the judgment shall be deemed to exist as in respect to judgments in civil actions in such court, except where taxes have been paid before the entry of judgment, or where the land is exempt from taxation, in which cases the judgment shall be prima facie evidence only of its regularity and validity.

280.01 MODE OF SALE. On the second Monday in May, in each year, the county auditor shall sell all parcels of land against which judgment has been entered and remains unsatisfied for the taxes of the preceding year or years. * * *

280.03 CERTIFICATE OF SALE. The county auditor shall execute to the purchaser of each parcel a certificate which may be substantially in the following form:

"I,....., auditor of the county of....., state of Minnesota, do hereby certify that at the sale of lands pursuant to the real estate tax judgment entered in the district court in the county....., on the..... day of ....., 19...., in proceedings to enforce the payment of taxes delinquent on real estate for the years ..... for the county of....., which sale was held at....., in said county of .....,on the .....day of..... ....., 19...., the following described parcel of land, situate in said county of....., state of Minnesota: (insert description), was offered for sale to the bidder who should offer to pay the amount for which the same was to be sold, at the lowest annual rate of interest on

such amount; and at said sale I did sell the said parcel of land to ..... for the sum of..... dollars, with interest at ..... per cent per annum on such amount, that being the sum for which the same was to be sold, and such rate of interest being the lowest rate per cent per annum bid on such sum; and, he having paid such sum, I do therefore, in consideration thereof, and pursuant to the statute in such case made and provided, convey the said parcel of land, in fee simple, to said....., his heirs and assigns, forever, subject to redemption as provided by law.

Witness my hand and official seal this..... day of ....., 19.....

.....

County Auditor."

If the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein, in fee simple, without any other act or deed whatever. Such certificate may be recorded, after the time for redemption shall have expired, as other deeds of real estate, and with like effect. If any purchaser at such sale shall purchase more than one parcel, the auditor shall issue to him a certificate for each parcel, so purchased.

280.06 WRONG NAME OF OWNER. No such sale shall be affected or deemed invalid on account of the use of another name than that of the true owner in describing the ownership of the parcel of land sold in any tax proceeding.

280.11 LANDS BID IN FOR STATE. At any time after any parcel of land has been bid in for the state, the same not having been redeemed, the county auditor shall assign and convey the same, and all the right of the state therein ac-

quired at such sale, to any person who shall pay the amount for which the same was bid in, with interest at the rate of 12 per cent per annum, and the amount of all subsequent delinquent taxes, penalties, costs, and interest at such rate upon the same from the time when such taxes became delinquent. He shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I....., auditor of the county of....., state of Minnesota do hereby certify that at the sale of lands pursuant to the real estate tax judgment entered in the district court in the county of....., on the..... day of....., 19...., in proceedings to enforce the payment of taxes delinquent upon real estate for the years ..... for the county of....., which sale was held at....., in said county of....., on the..... day of....., 19...., the following described parcel of land, situate in said county of ....., state of Minnesota: (insert description), was duly offered for sale; and, no one bidding upon such offer an amount equal to that for which the parcel was subject to be sold, the same was then bid in for the state at such amount, being the sum of.....dollars; and the same still remaining unredeemed, and on this day..... .....having paid into the treasury of the county the amount for which the same was so bid in, and all subsequent delinquent taxes, penalties, costs, and interest, amounting in all to ..... dollars, therefore, in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby assign and convey this parcel of land, in fee simple, with all the right, title, and interest of the state acquired therein at such sale, to .....,

his heirs and assigns, forever, subject to redemption as provided by law.

Witness my hand and official seal this..... day of....., 19....

.....

(SEAL) County Auditor."

If the land shall not be redeemed, as provided in chapter 281, such certificate shall pass to the purchaser or assignee an estate therein, in fee simple, without any other act or deed whatever. Such certificate or conveyance may be recorded, after the time for redemption shall have expired, as other deeds of real estate, and with like effect.

280.25 PURCHASER TO RECEIVE DEED. Any person, or his heirs or assigns, receiving the certificate described in section 280.13 shall be entitled to a deed from the state 60 days after the service of a notice of expiration of time from redemption and filing proof of such service, which notice shall be substantially as provided in section 281.13 and until the expiration of such time for redemption the land described in such certificate shall be subject to redemption in the manner provided in section 281.02 and upon the expiration of such redemption period, upon presentation of such certificate to the commissioner of taxation, he shall be authorized to execute a deed in the name of the state to the person entitled thereto, conveying the lands therein described; and every such deed shall vest the grantee with complete title to such lands, subject to the defenses that the tract or parcel was exempt from taxation or that the taxes for which such tract or parcel was sold at that tax sale had been paid. Such deed may be recorded as other deeds of real estate and the record thereof shall have the same force and effect in all respects

as the record of such deeds and shall be evidence in like manner.

280.26. HOW AND WHEN PURCHASER TO GET DEED. Any person, or his heirs or assigns, receiving the certificate described in section 280.25 shall be entitled to a deed from the state and, upon presentation of such certificate to the commissioner of taxation, he shall be authorized to execute a deed in the name of the state to the person entitled thereto, conveying the lands therein described, and every such deed shall vest the grantee with complete title to such lands, subject to the defenses that the tract or parcel was exempt from taxation or that the taxes had been paid for which such tract or parcel was sold at the said tax sale. Such deed may be recorded as other deeds of real estate and the record thereof shall have the same force and effect in all respects as the record of such other deeds and shall be evidence in like manner. Any one having any interest in any such tract or parcel of land shall have the right to redeem the land, as provided in chapter 281, and no such tax deed shall be issued, nor shall the full period of redemption expire until 60 days shall have elapsed after the filing of proof of service of notice.

CHAPTER 328 H. F. No. 561

An Act to provide for the taxation of mortgages of real property.

Be it enacted by the Legislature of the State of Minnesota:

Mortgage defined.—Section 1. The words "real property", "real estate" and "land", as used in this act, in addition to the definitions thereof contained in the Revised Laws 1905,

shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the words "mortgage", as so used, shall mean any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price.

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Supreme Court of the United States

OCTOBER TERM, 1945

No. 254

S. R. A. INC.,

Petitioner,

vs.

STATE OF MINNESOTA

No. 255

S. R. A. INC.,

Petitioner,

vs.

STATE OF MINNESOTA (1941 Tax)

BRIEF IN OPPOSITION

GEO. B. SJOSELIUS,
Deputy Attorney General of the
State of Minnesota
JAMES F. LYNCH, County Attorney
Ramsey County, Minnesota
ANDREW R. BRATTER,
Assistant County Attorney
Ramsey County, Minnesota.
Attorneys for the Respondent.

Of Counsel:
J. A. A. BURNQUIST
Attorney General

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Supreme Court of the United States

OCTOBER TERM, 1945

No. 254

S. R. A. INC.,

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STATE OF MINNESOTA

No. 255

S. R. A. INC.,

Petitioner,

vs.

STATE OF MINNESOTA (1941 Tax)

BRIEF IN OPPOSITION

We take the liberty of consolidating the two cases for the purpose of filing one brief since the question presented and the assessment involved in each is identical. While No. 254 relates to 1940 taxes and No. 255, the 1941 taxes, they are the result of the 1940 assessment. The assessments are made biennially in the even numbered year. Minn. Statutes 1941, Sec. 273.01.

QUESTION PRESENTED

May the State of Minnesota tax lands held by petitioner under contract for deed from the United States of America, before payment of the whole purchase price, if the proceedings are subject to the paramount rights of the United States?

STATUTES INVOLVED

Minnesota Statutes 1941, Section 272.01 provide:

> "All real and personal property in this state, * * * is taxable, except such as is by law exempt from taxation".

THE FACTS

The property in question is located on the northwest corner of Fifth and Wabasha Street in the principal business district of St. Paul. Prior to May, 1939, the United States owned the land and erected thereon a building used for various governmental purposes. For many years immediately prior to that date it had not been used by or for any governmental agency or purpose and was offered for sale as surplus property.

On that date the petitioner entered into a contract for deed with the United States for the sum of $121,101.00 payable in installments for a period of ten years; the United States agreeing to give a deed upon completion of the payments.

Petitioner was to have immediate possession of the property; could encumber its title to the same, could lease all

or any part thereof; or sell parts thereof and obtain a deed prior to payment of full purchase price; (R. 47-48) and could sell and assign its contract without the consent of the United States. (R. 5)

Petitioner did take possession; razed and demolished the building thereon and replaced it with a one-story structure consisting of many stores—which have been leased to various persons. The remainder of the premises have been leased and used as a parking lot. All rents have been retained by S. R. A. for its own account.

No part thereof has ever thereafter been devoted to the business or activities of the United States of America. (R. 49)

The assessment was non-discriminatory. The property was assessed in the same manner as all other property in the county. The true and full value agreed upon was $225,000 (R. 49)

The trial Court found that the petitioner had the equitable title to the property and that the United States had the legal title thereto as trustee for the petitioner, as security for payment of the purchase price, and ordered judgment to be entered in favor of the State, "*subject however to the prior rights, liens and interests of the United States*". (R. 50-51) Judgment was entered directing a sale "*subject however to the prior rights, liens and interests of the United States*". (R. 51-52)

SUMMARY OF THE STATE COURT'S OPINION

The Court determined that the legal title remained in the United States merely as security for payment, while the equitable title vested in petitioner; and that the State of Minnesota had a right to tax petitioner's interest in this property since it did not affect the interests of the United States.

The court distinguished U. S. v. Allegheny County, 322 U. S. 174, upon the following grounds:

(1) Allegheny County attempted to tax machinery the *legal and equitable title* to which was in the United States;

(2) The entire plant was by contract employed as a means to discharge the important national function of waging war;

(3) The sale of the land to collect the tax would be disastrous to the War Effort;

(4) Mesta, as bailee of the machinery, was under a duty to assert the defense of tax immunity to protect the property of the United States.

It held that Irwin v. Wright and all other *statutory land grant cases* are not in point, because the entry man or other persons acting under such a statute does not acquire equitable title until he has completely fulfilled the conditions which entitle him to a patent; but in the case of a vendee, the equitable title vests at once although the naked legal title remains with the vendor as security for the payment of the purchase price.

It declared that partial equitable title is an anomaly in the law. The court criticized such expressions as "complete" equitable title, as used in the land grant cases or "perfect" equitable title as used in Lincoln County v.

Pacific Spruce Corp. (9 Cir.) 26 Fed. 2nd, 435 and as supplied in Ken Realty Co. v. Johnson (5 Cir.) 138 Fed. 2nd, 809.

The *land grant cases* were distinguished, too, because they involved performance of important governmental functions, settlement of the public domain, with which taxation would seriously interfere, if permitted. Here, taxation does not impair a Federal function. It declared that the Minnesota, the Federal, as well as the universal rule is that the equitable title vests as hereinbefore stated. No basis exists for a different rule where the government is the vendor. And where the government was the vendee, the general rule has been applied. It affirmed the principles announced in the earlier appeal (R. 27-38), and asserted that the character or status of the owner of the equitable title and not that of the holder of the legal title determines whether the equitable estate is subject to taxation. A tax levy upon the vendee's equitable interest is not directly, or indirectly, a tax upon the vendor's legal estate. The state has exercised its taxing power in an uniform and nondiscriminatory manner, so as to impose no greater burden upon buyers of government property than upon other buyers. The government has no right to sell its immunity.

It declared that the state may direct a sale for taxes subject to the paramount interest of the United States, citing New Brunswick v. The United States as authority. The court held that the tax in the New Brunswick case is comparable.

> "Any difference between a security right obtained under a mortgage and that provided for by the retention of the legal title under an executory sales contract is a matter of form only and not of substance." (R. 52-74)

ARGUMENT

I.

Jurisdiction.

The jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code (28 U. S. C. A., Section 344). But it is not shown that a Federal question is involved; that the question has not heretofore been determined; that the decision is in conflict with the holdings of this court; nor that the petitioner has the right to assert the immunity of the United States from taxation. The decision is in accord with and controlled by City of New Brunswick v. United States, 276 U. S. 547.

II.

No Federal Question is Involved.

The decision is based upon non-Federal grounds. It turned upon the interpretation of state law and statutes declaring that the state law permits taxation of petitioner's equitable title. No interest of the United States was involved or affected. The tax was levied exclusively upon the property of the petitioner. Both in the levy and in the judgment directing the sale, the interests of the United States were expressly declared to be supreme. The judgment directed the sale to be "subject, however, to the prior rights, liens and interests of the United States of America". (R. 51-52). This decision, declaring that an equitable title of the purchaser is taxable under Minnesota

laws, while excluding and shielding the rights of the United States, settled a state question. It therefore follows that this court is without jurisdiction. Lynch v. New York, 293 U. S. 52.

III.

The Decision is in Accord With the Holding of This Court.

We consider the City of New Brunswick v. United States, Supra, (*not cited by petitioner*) to be controlling.

The many decisions cited by the petitioner were all considered by the court below and distinguished. (R. 56-65) The case at bar does not conflict with Kansas Pacific Railway Co. v. Prescott, 16 Wall. 603, Union Pacific R. R. Co. v. McShane, 22 Wall. 444, Northern Pacific Ry. Co. v. Rockne, 115 U. S. 600 and Irwin v. Wright, 258 U. S. 219, all of which involved *statutory land grants* and not the relationship of vendor and purchaser from which an equitable conversion results, even though the contract be executory, and vests an equitable title in the purchaser; nor does it conflict with United States v. Allegheny County, 322 U. S. 174, which involved an attempt to tax personal property, the legal and equitable title to which were in the United States. The court below distinguished Lincoln County v. Pacific Spruce Corp., 26 Federal 2nd 435 and the several state cases dealing with the vendor and purchaser relationship, as unsound and inapplicable because they are founded squarely upon the *land grant cases*. The reasons given for distinguishing all of these cases are set forth in the summary of the court's opinion, which appears on page 4 of this brief. Ken Realty Co. v. Johnson, 138 Federal 2nd,

809, on the other hand, supports the position of the court below and follows the New Brunswick case.

The fact situation in the New Brunswick case was, in effect, the same as in the instant case. There the Housing Corporation, a Federal instrumentality, received a ten per cent down payment, agreed to give a deed and take back a first mortgage for 90% of the unpaid purchase price. Here, the purchaser held under a contract for deed, having the equitable title while the United States retained the legal title as security for the payment of the purchase price. In other words, the government retained a vendor's lien, an interest in the nature of a mortgage. *In substance, the transactions are identical.* (Cf. Helvering v. Lazarus & Co., 308 U. S. 252, 255).

Under such circumstances, the court said:

> "We see no reason, however, if the New Jersey law permits, why the city may not assess taxes against the purchasers *upon the entire value* of the lots and enforce collection thereof by sale of their interests in the property. With that the corporation and the United States have no concern."
> (276 U. S. 555, 556.)

That only the interests of the petitioners were sold, and not those of the United States, expressly appears in the judgment directing the sale in the identical language used in this case (R. 51-52). Of such proceedings, this court said, (p. 556):

> "This, we think, will meet the equities of the case as between the corporation and the city, *and fully protect the paramount right of the United States.*"

Cf. Forbes v. Gracey, 94 U. S. 762, 767; Elden v. Wood, 208 U. S. 226, 231; Union Oil v. Smith, 249 U. S. 337, 349.

Does the relationship of vendor and purchaser, where the vendee had paid part of the purchase price, has taken possession and has all rights of ownership subject to payment of the purchase price in full, in effect amount to the relationship of mortgagor and mortgagee? If so, then the case at bar is controlled by the New Brunswick case.

The authority to tax such an interest under the Constitution and laws of Minnesota is a state question and was determined against the petitioner. Schuykill Trust Co. v. Pennsylvania, 302 U. S. 506, 512, 514; Storaasli v. Minnesota, 283 U. S. 57, 62; General Am. Tank Car Corp. v. Day, 270 U. S. 367, 371; Boston v. Jackson, 260 U. S. 309, 314-316; Illinois Central R. Co. v. Minnesota, 309 U. S. 157, 165; Central Hanover Bank & Trust Co. v. Kelly, 319 U. S. 94, 97; Lewis v. Morson, 151 U. S. 545, 549; Taylor v. Secor, 92 U. S. 575, 618. The only question the petition raises then is the right to tax the property according to its full value, as all other property is taxed. This, likewise, is settled by the New Brunswick case adversely to the petitioner.

III A.

The State Law is Consistent With the Federal Law.

The petitioner contends that the federal law should apply in this case and urges that the land grant cases represent the federal law. The inapplicability of these cases has already been discussed. The decision below turned on both the state and federal rule (R. 65-67).

What is the federal law? In the absence of statute, this court draws upon general principles consistent with equity.

Jackson County v. United States, 308 U. S. 343. In commercial transactions, it follows the general commercial law. The rule applied is determined by reference to the federal and state cases and is such as governs in transaction between private parties. Canfield Trust Co. v. United States, 318 U. S. 363; D'Oench D. and Co. v. Federal Deposit Inv. Corp., 315 U. S. 447; Deitrick vs. Greaney, 309 U. S. 190; National Metropolitan Bank v. United States ...U. S. ..., 89 L. ed. 386, (Advance Opinions); United States vs. Bostwick, 94 U. S. 53; Cory Bros. & Co. v. United States, 51 F. (2d) 1010.

In both jurisdictions, state and federal, the general and almost universal rule is as expressed in Bissell v. Heyward, 96 U. S. 580, 586:

> "* * * the execution of the contract (with partial payment thereon) was a transfer in equity of the title to the land to Bissell; leaving in the representatives of William C. Heyward simply a naked title as trustee for Bissell, to be conveyed upon performance on his part."

Pomeroy Eq. Jur. 5th ed. Vol. 2 § 368; 66 C. J. § 707; Stewart v. Griffith, 217 U. S. 323, 332; Gunton v. Carroll, 101 U. S. 426, 430; Lenman v. Jones, 222 U. S. 51, 54; Lewis v. Hawkins, 23 Wall. 119; National Bank of Ky. vs. Louisville Trust, 67 F. (2d) 97, 100 (Certiorari denied) 291 U. S. 665; Curran v. Kennedy, 94 Minn. 430, 103 N. W. 212; State v. Probate Court, 145 Minn. 155, 176 N. W. 493; Wilder v. Haughey, 21 Minn. 101.

It therefore follows that there is no conflict between the rule as applied by the court below and the federal law; and there is no obstacle to the application and controlling effect of the New Brunswick case.

IV.

Petitioner May Not Assert Federal Immunity From Taxation.

We question the right of the petitioner to assert the federal immunity for its own, exclusive gain, without benefit of any kind resulting to the United States. The petitioner is seeking a "windfall". Panhandle Oil Co. v. Knox, 277 U. S. 218, 224; Helvering v. Mountain Producers Corp. 303 U. S. 376, 386, 387; Graves v. N. Y. 306 U. S. 466, 483; Ex Parte Kumezo Kawato, 317 U. S. 69, 74; Standard Oil Co. v. Fontenot, 4 So. 2nd 634. In the Allegheny case, supra, the defense was asserted for the exclusive benefit of the government.

CONCLUSION

We respectfully submit the petitioner has failed to justify a review on writ of certiorari. The decision is controlled by and is in accord with the New Brunswick case.

GEO. B. SJOSELIUS,
Deputy Attorney General of the
State of Minnesota
JAMES F. LYNCH, County Attorney
Ramsey County, Minnesota
ANDREW R. BRATTER,
Assistant County Attorney
Ramsey County, Minnesota.
Attorneys for the Respondent.

Of Counsel:
J. A. A. BURNQUIST
Attorney General

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IN THE

Supreme Court of the United States

OCTOBER TERM 1945
No. 254, 255.

S. R. A. INC.

Petitioner,

vs.

STATE OF MINNESOTA (1940, 1941 Tax)

RESPONDENT'S BRIEF

GEO. B. SJOSELIUS
Deputy Attorney General of the
State of Minnesota
JAMES F. LYNCH, County Attorney
Ramsey County, Minnesota
ANDREW R. BRATTER
Assistant County Attorney
Ramsey County, Minnesota
Attorneys for the Respondent

Of Counsel:
J. A. A. BURNQUIST
Attorney General

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IN THE

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OCTOBER TERM 1945
No. 254, 255.

S. R. A. INC.

Petitioner,

vs.

STATE OF MINNESOTA (1940, 1941 Tax)

RESPONDENT'S BRIEF

OPINIONS BELOW

The findings of fact and conclusions of law (R. 47) and the judgment of the district court (R. 51) are not officially reported. The opinions of the Supreme Court of Minnesota (R. 28-38; 54-74) are reported in 213 Minn. 487, 7 N. W. 2d 484; 219 Minn. 493, 18 N. W. 2d 442; and 219 Minn. 517, 18 N. W. 2d 455.

QUESTION PRESENTED

May the State of Minnesota tax lands held by petitioner under contract for deed from the United States of America, before payment of the whole purchase price, if the proceed-

ings are subject to the paramount rights of the United States?

STATUTES INVOLVED

Minnesota Statutes 1941, Section 272.01 provide:

> "All real and personal property in this state, * * * is taxable, except such as is by law exempt from taxation".

STATEMENT OF THE CASE

The property in question is located on the northwest corner of Fifth and Wabasha Streets in the principal business district of St. Paul. Prior to May, 1939, the United States owned the land and erected thereon a building used for various governmental purposes. For many years immediately prior to that date it had not been used by or for any governmental agency or purpose and was offered for sale as *surplus property.* (R. 47-48)

On that date the petitioner entered into a contract for deed with the United States for the sum of $121,101.00 payable in installments for a period of ten years; the United States agreeing to give a deed upon completion of the payments. (R. 48)

Petitioner was to have immediate possession of the property, could encumber its title to the same, could lease all or any part thereof; or sell parts thereof and obtain a deed prior to payment of full purchase price; and could sell and assign its contract without the consent of the United States. (R. 48)

Petitioner did take possession; razed and demolished the building thereon and replaced it with a one-story structure consisting of several stores—which have been leased to vari-

ous persons. The remainder of the premises have been leased and used as a parking lot. All rents have been retained by S. R. A. for its own account. (R. 49)

No part thereof has ever thereafter been devoted to the business or activities of the United States of America. (R. 49)

The assessment was non-discriminatory. The property was assessed in the same manner as all other property in the county. The true and full value agreed upon was $225,000. (R. 49)

The trial Court found that the petitioner had the equitable title to the property and that the United States had the legal title thereto as trustee for the petitioner, as security for payment of the purchase price, and ordered judgment to be entered in favor of the State, "subject however to the prior rights, liens and interests of the United States". (R. 50-51 Judgment was entered directing a sale "subject however to the prior rights, liens and interests of the United States". (R. 51-52)

SUMMARY OF THE STATE COURT'S OPINIONS

In its first opinion, the Court declared that by virtue of the executory contract, the equitable title vested in the petitioner, as the vendee, which was a "right of the same magnitude as if an outright grant had issued and a purchase money mortgage had been given to secure the unpaid balance". (R. 37) And that the government retained merely a naked legal title, which it holds in trust for the vendee, as security for payment of the balance of the purchase price.

In the second opinion the court distinguished *United States v. Allegheny County*, 322 U. S. 174, upon the following grounds: (1) Allegheny County attempted to tax

machinery *the legal and equitable title* to which was in the United States; (2) The entire plant was by contract employed as a means to discharge the important national function of waging war; (3) The sale of the land to collect the tax would be disastrous to the War Effort; (4) Mesta, as bailee of the machinery, was under a duty to assert the defense of tax immunity to protect the property of the United States.

It held that *Irwin v. Wright*, 258 U. S. 219, and all other statutory land grant cases are not in point, because the entry man or other persons acting under such a statute does not acquire equitable title until he has completely fulfilled the conditions which entitle him to a patent, but in the case of a vendee, the equitable title vests at once although the naked legal title remains with the vendor as security for the payment of the purchase price.

That Congress, under the Homestead Acts, intended to withhold the equitable title to insure that the public domain would be given only to stable citizens capable of establishing permanent homes; that the Acts constitute a standing offer to unidentified persons of unidentified lands; that until complete compliance with the statute, the homesteader had no devisable estate, no right of alienation and no right to change his residence; the government as donor had no right to specific performance, no remedy for breach of condition; and that the grants to the railroads was for the purpose of developing the public domain.

It declared that partial equitable title is an anomaly in the law. The court criticized such expressions as "*complete*" equitable title, as used in the land grant cases or "*perfect*" equitable title as used in *Lincoln County v. Pacific Spruce Corp.* (9 Cir.) 26 Fed. 2nd, 435.

That *United States v. Milwaukee*, 100 F. 828 and *Lincoln County v. Pacific Spruce Corp.*, supra, and other cases, have erroneously adopted the reasoning of the land grant cases as applicable to contracts of sale.

The land grant cases were distinguished, too, because they involved performance of important governmental functions, settlement of the public domain, with which taxation would seriously interfere, if permitted.

Here, taxation does not impair a Federal function.

It declared that the Minnesota, the federal, as well as the universal rule is that the equitable title vests at once as hereinbefore stated. No basis exists for a different rule where the government is the vendor. In the absence of statutory provisions to the contrary, contracts between the United States and a citizen or private corporation are controlled by the same legal principles that govern contracts between private individuals. And where the government was the vendee, the general equitable rule has been applied.

It affirmed the principles announced in the earlier appeal (R. 27-38), and asserted that the character or status of the owner of the equitable title and not that of the holder of the legal title determines whether the equitable estate is subject to taxation. A tax levy upon the vendee's equitable interest is not directly, or indirectly, a tax upon the vendor's legal estate.

The state has exercised its taxing power in an uniform and nondiscriminatory manner, so as to impose no greater burden upon buyers of government property than upon other buyers.

The government has no right to sell its immunity.

SUMMARY OF THE ARGUMENT

1. The vendee, under an executory contract, is the owner of the land. This equitable doctrine is universally accepted and is the rule in the federal courts. The vendor holds the naked legal title in trust for the vendee as security for payment of the purchase price.

2. The land grant cases cited by petitioner are inapplicable. Congress intended to retain the equitable title until the claimant was entitled to a patent. Cases involving the sale of federal lands on contract, such as *Lincoln County v. Pacific Spruce Corp.*, and *United States v. Milwaukee* are unsound because they are based on the reasoning of the land grant cases.

3. The decision is consistent with the federal law. General equitable principles are applicable to contracts of the United States.

4. The decision is in accord with *City of New Brunswick v. United States*, 276 U. S. 547. In substance and effect the cases are the same.

5. The immunity of the federal government is not a barrier to state taxation unless burdens are directly imposed upon the government. A tax upon the vendee, with the government's rights excluded from the sale, imposes no burden upon the government.

6. The petitioner may not invoke the immunity for its own exclusive benefit and gain at the expense of the State and without corresponding benefit to the United States.

7. The Statutes of Minnesota authorize this tax.

ARGUMENT

I.

The Vendee, under an Executory Contract, is the owner of the land.

In speaking of the petitioner's interest in the land, the Court below held that the petitioner has "by virtue of its contract, the equitable title thereto, a right of the same magnitude as if an outright grant had been issued and a purchase money mortgage had been given to secure the unpaid balance". (R. 37)

The petitioner labors under the mistaken notion that it and the United States have separate interests in the land in question. This is not so. Petitioner as "The Vendee is looked upon and treated as the owner of the land". *Pomeroy's Eq. Jur. 5th Ed.* Sec. 368, Vol. 2, p. 21. The interest of the vendee passes to his heirs as real estate. *Summers v. Midland* (Minn.) 209 N. W. 323; *Stearns v. Kennedy* (Minn.) 103 N. W. 212; *Bissell v. Heyward*, 96 U. S. 580, 586. "The equitable interest of the vendor is correlative with that of the vendee; his beneficial interest in the land is gone and only the naked legal title remains, which he holds in trust for the vendee, accompanied, however, by a lien upon the land as security * * *". Pomeroy's Eq. Jur. 5th Ed. Sec. 368, Vol. 2, P. 24. This is the federal rule and was expressed in *Bissell v. Heyward*, supra, as follows:

> "The execution of the contract (with the partial payment thereon) was a transfer in equity of the title of the land to Bissell; leaving in the representatives of William C. Heyward simply a naked legal title as trustee for Bis-

sell, to be conveyed upon performance on his part." (96 U. S. 586)

"This lien * * * is not an interest in land, is neither a jur ad rem nor a jus in re, but merely an encumbrance." *Pomeroy's Eq. Jur. 5th Ed.*, Sec. 368, Vol. 2, p. 24. The vendor's lien is personal property and goes to his personal representative. *Stewart v. Griffith*, 217 U. S. 323, 332; *United States v. Cooper*, 196 F. 584, 585; *In re Boshart's Estate*, 177 N. Y. S. 567. It is subject to an inheritance tax as an intangible. *State v. Probate Court*, 145 Minn. 155, 176 N. W. 493; *In re Boshart's Estate*, supra. The rule that the land passes to the vendee under an executory contract may be said to be the universal rule *Lenman v. Jones*, 222 U. S. 51; *Gunton v. Carroll*, 101 U. S. 426, 430; *Bissell v. Haywerth*, 96 U. S. 580, 586; *Lewis v. Hawkins*, 23 Wall. 119; *National Bank of Ky. v. Louisville Trust* (Ky.), 67 F. (2nd) 97, 100; (certiorari denied 291 U. S. 665), *In re Ben Boldt, Jr. v. Floral Co.* (Colo.) 37 F (2nd) 499; *Laughlin v. North Wisc. Lumber Co.* (Wis.) 176 F 772; *Judd v. Rieff* (Ark.) 295 S. W. 370; *In re Ried's Est.* (Calif.) 79 P. (2nd) 451; *Miami Bond & Mtg. Co. v. Bell* (Fla.) 133 S. 547; *Rienzo v. Cohen* (Conn.) 152 A. 394; *Carter v. Johnson* (Ga.) 119 S. E. 22; *Hatch v. Commerce Ins. Co.* (Ia.) 249 N. W. 164; *Skinner v. Houghton* (Md.) 48 A. 85, 87; *Summers v. Midland* (Minn.) 209 N. W. 323; *Griffin Co. v. Jernigan* (Miss.) 154 So. 342; *Beckman v. Beckman* (Mo.) 58 S. W. 2nd 490; *Peoples Water Co. v. Millville* (N. J.) 123 A. 747; *In Re Boshart's Estate* (N. Y.) 177 N. Y. S. 567, affirmed 177 N. Y. S. 574; *Semmler v. Beulah Coal* (N. D.) 188 N. W. 310; *State v. Stevenson* (Ohio) 177 N. E. 247; *Winslow v. Gilstrap* (Ore.) 32 P. 2d 767; *Anania v. Serenta* (Pa.) 119 A. 554; *Salvatore v. Fus-*

cellaro (R. I.) 166 A. 26; *Baker v. Rushford* (Vt.) 101 A. 769; *Sole v. Swann* (Va.) 120 S. E. 870 *Biddle Concrete Co. v. McOlvin* (W. Va.) 111 S. E. 843; *Security State Bk. v. Monona Golf Club* (Wisc.) 252 N. W. 287.

The vendee is the one entitled to the award if the property be taken by eminent domain—although he holds the proceeds in trust and subject to the vendor's lien. *Clarke v. Long Island Realty Co.*, 126 N. Y. S. 697; *Nixon v. Marr*, 190 F. 913; *Summers v. Midland* (Minn.) 209 N. W. 323.

And where the Vendee was one who is exempt or immune from taxation, including the United States, the property has been held exempt—*Calvin v. Custer County* (Mont.) 107 P. (2nd) 134; *Village of Hibbing v. Commissioner of Taxation* (Minn.) 14 N. W. (2nd) 923, 926.

It therefore follows, as the Court below correctly held, that the lands which are being taxed are the lands of the petitioner; that the tax falls upon it; and that none of the interests of the United States are affected.

That the petitioner holds these lands as the vendee under a contract for deed has been conceded throughout the proceedings. But petitioner now attempts to make of it something else. The contract, is the usual form of contract for deed; the government agreeing to convey the land by deed upon completion of the payment of the purchase price; the purchaser agreeing to make the payments as provided in the contract. The distinction that petitioner attempts to make here is that an officer of the United States has executed the contract pursuant to an Act of Congress. To insist that this makes a difference is to contend that general equitable principles do not apply to commercial transactions of the United States, unless Congress expressly authorizes it. It cannot be denied that general equitable principles apply to contracts

made by the United States as in the case of those made between private citizens.

II.

The Land Grant cases and others cited are distinguishable.

There is little or no similarity between the rights of those claiming under the government by virtue of a statutory land grant, whether it be a railroad grant or under the Homestead Acts, and the relationship of vendor and purchaser, whether the vendor is the United States or a private individual. In the case of the railroad land grant, *the lands were not identifiable* until after the required portion of the road was constructed and accepted and the lands located, selected and surveyed. In the meantime, some of the lands might have been sold; they might have been swamp or federal lands; or they might have been subject to homestead or preemption. In which case, other lands would have to be selected. *M. K. & T. Ry. Co. v. Kansas Pacific Ry. Co.*, 97 U. S. 491. The government exercised much control over the land to be granted, whether railroad or homestead lands. *There was no binding obligation upon the railroad or the homesteaders.* Either could withdraw at any time without further obligation; whereas, if petitioner defaults he not only forfeits the amounts paid but may be held liable for any deficiency. (R. 4, 5) The land grants do not concern themselves primarily with disposition of public lands; but with grants as a means to obtain greater ends, to-wit: the establishment of transcontinental railroads; the development and population of the large public domain, to make it productive and to populate it with responsible, stable people; to reclaim waste

lands, etc. *M. K. & T. Ry. Co. v. Kansas Pacific Ry. Co.*, supra; *Ken Realty Co. v. Johnson*, 138 F. (2nd) 809) to require the clearing of lands for production; the construction of irrigation ditches and making water available to such waste lands, etc. *Irwin v. Wright*, 258 U. S. 219. The grants were intended to *take effect in the future,* when the claimants could show *complete* compliance with the statute, *Hall v. Russell*, 101 U. S. 503; whereas the grant to petitioners was intended to and did take effect *immediately*, to to the same extent, as if an outright grant had been made and a mortgage taken for the payment of the balance of the purchase price. Under the statutory land grant, Congress intended that *the legal and equitable title* should be retained until all of the conditions of the statute had been completely performed. *Ruddy v. Rossi*, 248 U. S. 105. Of this subject, the Court, in *Ken Realty Co. v. Johnson*, 138 F. 2d 809, 811 had this to say:

> "The development and settlement of the public domain involves policies and governmental activities and interests different from those here present. The settler may well be extended protection until he is firmly established as such, and the government has a continuing interest to see that he is. But in this case the land has been found useless to the government, and the government is seeking to divest itself of it and to return it to the general mass of property in the state. It has given the purchaser full possession and control of the property and is relieved of the risk of its loss or destruction and has allowed the right to lease, and even to sell off parts of it, *retaining the title solely to secure the balance of the purchase price.*"

A more complete discussion of this question appears in the opinion of the Court below. (R. 54) This should demon-

strate the inapplicability of *Irwin v. Wright*, supra, *Kansas Pacific Ry. Co. v. Prescott*, 16 Wall. 603; *Union Pacific Ry. Co. v. McShane*, 22 Wall. 444 and other similar cases cited by petitioner.

In contrast to the purposes of the land grant acts, *U. S. C. title 40*, Sec. 304 (A), which authorizes the sale of "*surplus property*", (property which has out-lived its usefulness for governmental functions) serves the purpose on the one hand "of salvaging its value and on the other hand for the purpose of returning it to the state tax rolls to bear its just share of the costs of local government." (R. 65)

The petitioner relies upon *Lincoln County v. Pacific Spruce Corp.* 26 F. (2d) 435 and its predecessor, *United States v. Milwaukee*, 100 F. 828. Although they are cases involving the sale of lands by the government on contract, we contend that they were erroneously decided because they followed and adopted the rule of the land grant cases. In the *Pacific Spruce Corp.* case, supra, the court distinguished the equitable doctrine that should have been applied, solely because the United States was the vendor. It said:

> " * * * and the final test is: Has the government parted with everything except the naked legal title? If so, the property is subject to taxation; otherwise not." (26 F. 2d 435, 437).

As between private individuals, the Court undoubtedly would have answered that question in the affirmative because it is the general equitable rule that the vendee is the owner of the land; but because and only because the United States was the vendor, the Court declared, upon the authority of the land grant cases, that the equitable title does not pass to the vendee until the entire purchase price has been

paid and the vendee is entitled to a deed. This is a novel doctrine and without *sound* authority to support it. *In Ken Realty Company v. Johnson,* supra, the court, after distinguishing the land grant cases and demonstrating their inapplicability, said:

> "We consciously refuse to follow *Lincoln County v. Pacific Spruce Corporation.*" (138 F. (2nd) 809, 812).

It will hereinafter be seen that the contracts of the United States have the same legal and equitable effect and consequences as contracts between private persons. The court in the *Pacific Spruce case,* supra, should have applied the universal equitable doctrine and held that the government did part with everything but the naked legal title.

The petitioner cites *United States v. County of Allegheny,* 322 U. S. 174 in support of its contentions. A review of the facts will at once demonstrate that it is inapplicable. There, the State of Pennsylvania attempted to lay a tax upon machinery, *the legal and equitable title* to which were in the United States. Two thoughts dominate the decision of the Court: first, the attempt of Allegheny County authorities to deny or defeat the government's title to the machinery; and second, that the machinery was being used by the Mesta Machine Company in the performance of a vital governmental function—the production of heavy field guns for the Army. Three propositions were decided by the court: (1) Where the government by pursuing its procurement policies, has purchased property, the State law may not be resorted to, to deny the government's title; or to defeat a government procurement policy; (2) That the substance of the procedure was to lay an ad valorem general property tax on property owned by the United States; (3) That the rights of the gov-

ernment are affected because "If the tax is collected by selling the land out from under the machinery, the effect on its usefulness to the government would be almost as disastrous as to sell the machinery itself. The coercion of payments from compelling the government to move its property and interrupt production at the Mesta plant would defeat the purpose of the government in owning and leasing it." (322 U. S. 187)

In the case at bar, the equitable title has passed to the petitioner and it is using the property with all the incidents of ownership for its own exclusive benefit and gain. It renders no governmental function whatsoever. The property was disposed of by the government as "surplus property". The tax in the instant case does not burden the government or interfere with any governmental function. The paramount rights of the United States are preserved. We have not resorted to a trick local law to defeat the government's title. Our Court has applied general equitable principles.

III.

The decision is consistent with the Federal law.

The petitioner contends that the federal law requires a holding that the *legal and equitable* were retained by the Government under its contract and has urged that the land grant cases and the contract cases based thereon, such as *Lincoln County v. Pacific Spruce Corp.* supra, are controlling. We have already demonstrated the inapplicability of these cases.

What is the federal law? In the absence of statute, this court draws upon general principles consistent with equity.

Jackson County v. United States, 308 U. S. 343. In commercial transactions, it follows the general commercial law. The rule applied is determined by reference to the federal and state cases and is such as governs in transactions between private parties. *National Metropolitan Bank v. United States* ....U. S. ....., 89 L. ed. 386, (Advance Opinions); *D'Oench D. and Co. v. Federal Deposit Inv. Corp.*, 315 U. S. 447; *Deitrick v. Greaney*, 309 U. S. 190. "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them". *United States v. Bostwick*, 94 U. S. 53; *Cory Bros. & Co. v. United States*, 51 F. 2d 1010. In *Calvin v. Custer County* (Mont.) 107 P. 2d 134, where the United States was the vendee, the court declared that the equitable title vested in it and that the property was thereafter immune from taxation. It said, "We think that in determining in whom the equitable interest vested, we must treat the United States as if it were a private person or corporation, amenable to suit".

In both jurisdictions, state and federal, the general and almost universal rule as shown by the numerous decisions herein cited, is as expressed in *Bissell v. Heyward*, 96 U. S. 580, 586;

> " * * * the execution of the contract (with partial payment thereon) was a transfer in equity of the title to the land to Bissell; leaving in the representatives of William E. Heyward simply a naked title as trustee for Bissell, to be conveyed upon performance on his part."

Pomeroy Eq. Jur. 5th ed. Vol. 2, Sec. 368; *Stewart v. Griffith,* 217 U. S. 323, 332; *Gunton v. Carroll,* 101 U. S. 426, 430; *Lenman v. Jones,* 222 U. S. 51, 54; *Lewis v. Hawkins,* 23 Wall. 119; *National Bank of Ky. v. Louisville Trust,* 67 F. (2d) 97, 100 (Certiorari denied) 291 U. S. 665; *Stearns v. Kennedy,* 94 Minn. 439, 103 N. W. 212; *State v Probate Court,* 145 Minn. 155, 176 N. W. 493; *Wilder v. Haughey,* 21 Minn. 101. It therefore follows that whether local law or federal law applies, there is no conflict between the rule as applied by the court below and the federal law.

IV.

The decision is in accord with the holding of this Court.

We consider the *City of New Brunswick v. United States,* 276 U. S. 547 to be controlling. That case involved facts which in substance and effect were the same as those which are involved in this appeal. There the United States Housing Administration of World War I, a federal agency, under authority of Congress, sold a number of homes on contract agreeing upon payment of 10% of the purchase price to give a deed and to take back a first mortgage as security for payment of the balance of the purchase price. When this was done and before the deeds were delivered, the City of New Brunswick placed these properties upon the tax rolls. They taxed them upon their *entire value.* The United States intervened and sought to have the enforcement of the taxes enjoined. Counsel for the government cited the railway land grant cases and Homestead cases, among others. This Court ignored these authorities, however, and held that the purchasers were the equitable owners, and may be

taxed to the extent of the *full value of the property* but that the city's lien was inferior to the government's mortgage and that the city could sell the property to satisfy the tax lien only if the rights of the United States Housing Corporation were expressly excluded. The court said:

> "We see no reason, however, if the New Jersey law permits, why the city may not assess taxes against the purchasers upon the entire value of the lots and enforce collection thereof by sale of their interest in the property. With that the corporation and the United States have no concern." (276 U. S. 547, 555, 556)

And the Court pointed out that tax sales could be held if they are made, "by express terms, subject to all such prior rights, liens and interests. This, we think will meet the equities of the case as between the corporation and the city and fully protect the paramount rights of the United States." In the case at bar, the trial court followed the suggestion of this court by incorporating in the Order for Judgment in favor of the respondent the precise language of the *New Brunswick case,* "subject, however, to the prior rights, liens and interests of the United States", and in the Judgment directing the sale "subject, however, to the prior rights, liens and interests of the United States". (R. 50 to 52)

The only distinction between the *New Brunswick case*, supra, and the case at bar is that in that case the government agreed to give a deed and take back the mortgage for 90% of the purchase price, whereas, in the instant case the government resorted to entering into a contract for deed to accomplish the same result. In the one case, it held a first mortgage as security for payment of the purchase price; and in the other, the naked legal title as security for payment of

the purchase price. *If we are to consider the substance of these transactions they are identical.* Cf. *Helvering v. Lazarus & Co.*, 308 U. S. 252, 255 where it was said that, "General recognition has been given the 'established doctrine that a court of equity will treat a deed, absolute in form, as a mortgage, when it is executed as security for a loan of money'. In the field of taxation, administrators of the laws and the courts are concerned with substance and realities . . . "

The *City of New Brunswick case*, supra, was followed by *Ken Realty Company v. Johnson*, 138 F. 2d 809, (5th C. C. A.) which case involved the sale of federal property under a contract for deed on terms almost identical with those involved in the instant case, and the property was held taxable before the whole purchase price was paid according to its full value, less such amounts as may still be due the United States.

V.

The Federal immunity is not a barrier to State taxation unless burdens are directly imposed on the Federal Government.

This court recently considered the conflicting interests of state and nation and put its position thus:

> "The trend of our decisions is not to extend governmental immunity from state taxation and regulation beyond the national government itself and governmental functions performed by its officers and agents. We have recognized that * * * state regulation like state taxation inevitably imposes some burden on the national government of the same kind as those imposed on citizens of the United States within the state's borders * * * ." *Penn Dairies vs. Milk Control Commission*, 318 U. S. 261, 270, 271.

The Federal immunity should not be allowed unless from practical considerations it appears that there is a direct burden upon or interference with a governmental function. In *Helvering v. Mountain Producers Corporation,* 303 U. S. 376, 385 this court said:

> "In numerous decisions we have had occasion to declare the competing principle, buttressed by the most cogent consideration, that the power to tax should not be crippled 'by extending the constitutional exemption to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the governmental instrumentality and there is only remote, if any, influence upon the exercise of the function of government.'"

From a practical view, there is no direct interference with a federal function in the case at bar. The effect upon the sale of property would only be remote. The purpose of the immunities is to "forestall undue interference", (*Graves v. New York,* 306 U. S. 466, 477) so that neither government shall be "allowed to cripple the operation of the other". (306 U. S. 488).

We have assessed and taxed this property as all other property is assessed and taxed. The value upon which the tax is based is the agreed value. Therefore, the tax is non-discriminatory.

It is claimed that such taxation interferes with the power of Congress to dispose of Federal lands. It does not interfere with it, even if it be claimed that the United States could realize more from such sales if immunity were assured to the purchaser. It did not prove to be true in this case. The consideration was $121,101; while the petitioner agreed that the value was $225,000, which includes a small one-story

structure. But is the immunity of the United States from taxation subject to barter and sale? If not, then in what manner has the State interfered with this Federal power? The immunity is personal to the government, and is not transferable to or to be used for the special protection of the citizen. Any effect upon sales of property would be remote. All that the federal government has a right to require is that it "be assured a fair and non-discriminatory sale market in competing with other vendors". (R. 70) The only purpose of the immunity is not one of profit but one that will enable a dual form of government to function. The paramount rights of the United States have been recognized and preserved in the judgment of the Court. (R. 51, 52)

VI.

The Petitioner may not assert the Federal immunity from taxation.

We question the right of the petitioner to assert the federal immunity from taxation for its own exclusive gain, without benefit of any kind resulting to the United States. In recent years, this court has rejected such claims. It was expressed in this manner by Mr. Chief Justice Stone:

> "* * * and where that immunity is invoked by the private citizen it tends to operate for his benefit at the expense of the taxing government and without corresponding benefits to the government in whose name the immunity is claimed." *Graves v. New York*, 306 U. S. 466, 483.

To the same effect see the dissenting opinion of Mr. Justice Holmes in *Panhandle Oil Company v. Knox*, 277 U. S. 218,

224; *Helvering v. Mountain Producers Corporation*, 303 U. S. 376, 387; *Standard Oil Company v. Fontenot*, 4 So. (2nd) 634. The petitioner is seeking a "*windfall*". *Ex parte Kumezo Kawato*, 317 U. S. 69. The *Allegheny County case, supra*, is not to the contrary. There the private citizen gained nothing by asserting immunity. He was a cost-plus contractor and could admittedly have passed the tax on to the United States. The claim of immunity was made for the exclusive benefit of the United States. And the United States intervened at the very outset of the proceedings and maintained its claim of immunity to the very end.

No "windfall" can result to the State. The levy of this tax merely permits it to equalize the tax burden which makes it possible for owners of competing property to compete on an equal basis with the petitioner. To require tax-paying property to carry the entire tax burden while competing with tax-free property used for private commercial gain is obviously unjust.

VII.

The Statutes of Minnesota authorize this tax.

The authority for the taxation of the property in question is to be found in Minnesota Statutes 1941, Section 272.01, which provides:

> "All real and personal property in this state * * * is taxable, except such as is by law exempt from taxation."

This Act represents the general authority for tax officials to lay all property taxes, including this property, unless it be considered immune from taxation. What is "by law exempt from taxation" is listed in Minnesota Statutes 1941, Sec. 272.02 as follows: "(1) All public burying grounds. (2) All public school houses. (3) All public hospitals. (4) All academies, colleges and universities, and all seminaries of learning. (5) All churches, church property and houses of worship. (6) Institutions of purely public charity. (7) All public property exclusively used for any public purpose. (8) Personal property of every household of the value of $100 . . . "

This specification of exempt property together with the broad sweep of Sec. 272.01, negatives the claim that the property in question is outside the reach of the statute; or that the enactment of other legislation is necessary to subject it to taxation. So the authority to tax is determined by the question of immunity.

By decision, as well as by statute, (Minnesota Statutes 1941, Section 287.02), an executory contract for the sale of land under which the vendee takes possession is considered

to pass the land to the vendee and to create a mortgage of the land for the benefit of the vendor.

The petitioner persists in contending that the State's lien is superior to that of the United States. It is sufficient o answer hat the judgment here for review, expressly preserves the superiority of the government's lien; and it has the unanimous approval of the Minnesota Supreme Court. In *Baltimore Shipbuilding & Dry Dock Co. v. Baltimore,* 195 U. S. 375, the United States had conveyed certain lands to the company reserving the right to certain use of the property and rights therein and upon failure of the condition the property should revert to the United States. The property was taxed subject to the condition. In regard to the effect of the State's tax lien, Mr. Justice Holmes, speaking for the Court, said:

> "Perhaps it was assumed that this always was the effect of tax sales (creation of paramount lien, citing *N. P. R. Co. v. Traill County*). But it needs no argument to show that a State may do less . . . . With regard to what the State of Maryland has done and what are the purport and attempted effect of the tax in this case, we follow the court of appeals (of Maryland). That court treated the tax and the lien as going only to the dock company's interest in the land . . . ."

State v. County of Washington (Minn.) 292 N. W. 204, does not hold that a tax lien survives cancellation of the contract for deed where the State was the vendor, *in the absence of statutory authority.* In that case the lien survived only because of the statute regulating a particular agency. *Foster v. Duluth*, 120 Minn. 484, 140 N. W. 129 settles this question.

The other statutes were all argued to the Court below. They do not make that taxable which was not taxable under

Section 272.01. But are merely declaratory of what the law would be in the absence of such statutes. Ample authority for the levy of the tax in question is to be found in Section 272.01. It having been shown that the petitioner is the owner of the land, the right and the necessity to levy the tax under that statute is apparent.

No federal question is involved because federal rights have been expressly excluded from the levy and enforcement of the tax. Therefore, the authority to tax the petitioner's equitable title, the assessment of the tax and its enforcement under the Constitution and laws of the State of Minnesota are questions of local law and were determined against the petitioner. *Taylor v. Secor*, 92 U. S. 575, 618; *Lewis v. Monson*, 151 U. S. 545, 549; *General Am. Tank Car Corp. v. Day*, 270 U. S. 367, 371; *Storaasli v. Minnesota*, 283 U. S. 57, 62; *Schuylkill Trust Co. v. Pennsylvania*, 302 U. S. 506, 512, 514; *Illinois Central R. Co. v. Minn.*, 309 U. S. 157, 165; *Central Hanover Bank & Trust Company v. Kelly*, 319 U. S. 94, 97. The right to tax the property according to its full value, as other property is taxed was settled by *City of New Brunswick v. United States*, supra.

CONCLUSION

In conclusion we feel that it may be fairly said that *United States v. Milwaukee*, supra, and *Lincoln County v. Pacific Spruce Corp.*, supra, are erroneous because they are based upon inapplicable and distinguishable authority; that an equitable conversion resulted from the contract for deed in this case and as a result thereof the tax laid was not upon the land of the United States; that the facts are in substance and effect similar to those in and therefore controlled by the holding of *City of New Brunswick v. United States*, supra; that the tax here levied does not constitute a burden upon the United States Government or any of its instrumentalities; and finally, that the petitioner should not be heard to assert the federal immunity for its own benefit, but should be required to meet its fair share of the costs of State and local government whose protection it enjoys.

Respectfully submitted,

GEO. B. SJOSELIUS
Deputy Attorney General of the
State of Minnesota
JAMES F. LYNCH, County Attorney
Ramsey County, Minnesota
ANDREW R. BRATTER
Assistant County Attorney
Ramsey County, Minnesota
Attorneys for the Respondent

Of Counsel:
J. A. A. BURNQUIST
Attorney General

SUPREME COURT OF THE UNITED STATES.

Nos. 254 and 255.—October Term, 1945.

254	S. R. A., Inc., Petitioner, *vs.* State of Minnesota.	On Writs of Certiorari to the Supreme Court of the State of Minnesota.
255	S. R. A., Inc., Petitioner, *vs.* State of Minnesota.	

[March 25, 1946.]

Mr. Justice Reed delivered the opinon of the Court.

A question as to the power of the State of Minnesota to tax realty within the boundaries of that state, when the legal title remains in the United States is presented by this writ of certiorari.[1] The state ceded jurisdiction over the realty in accordance with the exclusive legislation clause of the United States Constitution, Article I, Section 8, Clause 17.

The realty in question was conveyed to the United States in 1867 as a site for a building to house a post office, a custom's office and offices for various departments and agencies of the United States. The building was eventually vacated and the property sold in 1939 by the Director of Procurement of the Department of the Treasury under the authority of an act for the disposal of surplus federal real estate. 49 Stat. 885.

It was purchased on public sale and improved by petitioner who was in full possession with right of user under an executory contract of sale between it and the United States at the time of the levy of the tax. That contract provided for a cash payment and annual instalments, possession by petitioner so long as it met the terms of the contract, and for repossession by the United States, with retention of prior instalments of the purchase price, upon the purchaser's failure to comply with any term or condition of the

[1] No. 255, S. R. A., Inc. *v.* State of Minnesota, is in all respects like No. 254, except that the state tax was laid for the year 1941. This opinion in No. 254 governs the result and the same judgment of affirmance is directed. See 219 Minn. 517; — U. S. —.

contract. Upon repossession, the United States was authorized to resell the realty and recover any resulting deficiency from the petitioner. All obligations due under the contract had been met. The major portion of the contract price had not fallen due and was unpaid. The contract permitted leases to others in subordination to the rights of the United States. The contract required the United States to execute and deliver a quit claim deed for the realty to the petitioner upon its completion of the requirements of the contract.

With the ownership of the property in the situation just described, taxes for general and special purposes were levied on the property for 1940 under the usual Minnesota procedure. The tax was stated in the assessment to be on the realty "subject to fee title remaining in the United States of America." Petitioner duly filed its objections in the proper state district court, pursuant to statute. 1 Minn. Stat. (1941) Ch. 278. So far as concerns this review, the objection to the tax was based on a claimed exemption of the realty from state taxation because title to all of the premises was in the United States. The exemption was sustained by the trial court. The Supreme Court of Minnesota reversed that judgment and denied exemption. *In re Petition of S. R. A., Inc.*, 213 Minn. 487. On retrial, the lower court held the realty liable for the tax and declared a lien "upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation, subject however, to the prior rights, liens and interests of the United States of America." This second judgment was affirmed on appeal. *In re Petition of S. R. A., Inc.*, 219 Minn. 493.

Certiorari was sought under Section 237 (b) of the Judicial Code. It was granted because of the importance and uncertainty of the question of the right of a state to tax realty sold by the United States in possession of a buyer from the Government under a contract of sale with uncompleted conditions for execution and delivery of the muniments of title. — U. S. —.[2]

[2] Varying results have been reached by other courts in similar situations. Lincoln County v. Pacific Spruce Corp., 26 F. 2d 445; Ken Realty Co. v. Johnson, 138 F. 2d 809; Mint Realty Co. v. Philadelphia, 218 Pa. 104; Copp v. State, 69 W. Va. 439; ABR Corp. v. Newark, 133 N. J. L. 34. See also Bancroft Investment Corp. v. City of Jacksonville, — Fla. —, decided January 15, 1946.

The supremacy of the Federal Government in our Union forbids the acknowledgment of the power of any state to tax property of the United States against its will. Under an implied Constitutional immunity, its property and operations must be exempt from state control in tax, as in other matters. *M'Culloch* v. *Maryland*, 4 Wheat. 316, 425, *et seq.*; *Van Brocklin* v. *Tennessee*, 117 U. S. 151, 177; *United States* v. *Allegheny County*, 322 U. S. 174, 176-77. This postulate, as a matter of federal law, forces final decision of the validity of claimed exemptions under this immunity upon this Court. *United States* v. *Allegheny County*, *supra*, 183, and cases cited. The impact of state taxation on federal operations may be so close and threatening as to compel judicial intervention to declare the state tax invalid, as in the *M'Culloch* case, or so remote and incidental as to justify a federal court in refusing to relieve a taxpayer from a state tax. *Alabama* v. *King & Boozer*, 314 U. S. 1. The line of taxability is somewhat irregular and has varied through the years.[3]

The right of a state to tax realty directly depends primarily upon its territorial jurisdiction over the area. The realty of petitioner had been conveyed to and used by the United States for the essential governmental activities which authorized the exercise of its exclusive legislative jurisdiction.[4] Exclusive legislative power is in essence complete sovereignty.[5] That is, not only is the federal property immune from taxation because of the supremacy of the Federal Government but state laws, not adopted directly or impliedly by the United States, are ineffective to tax or regulate other property or persons upon that enclave.[6] It would seem that the United States obtained this property in compliance with cession

[3] Compare Mayo v. United States, 319 U. S. 441, with Alabama v. King & Boozer, *supra*, and United States v. Allegheny County, *supra*, p. 176, notes 1 and 2, and cases cited. See Wilson v. Cook, No. 328, 1945 Term, decided March 4, 1946.

[4] Art. I, Sec. 8, Cl. 17:

"The Congress shall have Power . . .

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock Yards, and other needful Buildings; . . ."

[5] Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 532-33; United States v. Unzueta, 281 U. S. 138; Surplus Trading Co. v. Cook, 281 U. S. 647, 652-56; Bowen v. Johnston, 306 U. S. 19.

[6] Stewart & Co. v. Sadrakula, 309 U. S. 94; Surplus Trading Co. v. Cook, *supra*, note 5.

by Minnesota of exclusive sovereignty. Act of February 9, 1867, Minn. Laws 1867 Jan., Ch. LXXIX. The acceptance by the United States at that time of the power ceded is presumed.[7] This Court apparently has never directly passed upon the effect on federal sovereignty of the property's transfer by the United States to private hands.

In this instance there were no specific words in the contract with petitioner which were intended to retain sovereignty in the United States. There was no express retrocession by Congress to Minnesota, such as sometimes occurs.[8] There was no requirement in the act of cession for return of sovereignty to the state when the ceded territory was no longer used for federal purposes.[9] In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, Section 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power.[10] Recognition has been given to this result as a rule of necessity.[11] If such a step

[7] Fort Leavenworth R. R. Co. *v.* Lowe, *supra*, p. 528; Benson *v.* United States, 146 U. S. 325, 330; Mason Co. *v.* Tax Comm'n, 302 U. S. 186, 207.

At the time of the purchase, 5 Stat. 468, later incorporated in R. S. § 355, was in force. As it required consent of the state of the situs before expenditures of public money by the United States on locations purchased for needful buildings, it is to be presumed that all requirements were satisfied. R. S. § 355 has been consistently construed to require full sovereignty in the United States. 8 Op. A. G. 102; 10 Op. A. G. 34; 20 Op. A. G. 611; 31 Op. A. G. 265; 38 Op. A. G. 341; 39 Op. A. G. 285. R. S. § 355 has been superseded. 40 U. S. C. § 255; Adams *v.* United States, 319 U. S. 312.

[8] 30 Stat. 668; 9 Stat. 35.

[9] Compare Palmer *v.* Barrett, 162 U. S. 399; James *v.* Dravo Contracting Co., 302 U. S. 134, 144.

[10] Compare Palmer *v.* Barrett, *supra*, with Arlington Hotel *v.* Fant, 278 U. S. 439.

[11] Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S. 525, 542: "It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved

is necessary, Minnesota showed its acceptance of a supposed retrocession by its levy of a tax on the property. Under these assumptions the existence of territorial jurisdiction in Minnesota so as to permit state taxation depends upon whether there was a transfer of the property by the contract of sale.

In determining the meaning and effect of contracts to which the United States is a party, the governing rules of law must be finally declared by this Court. *United States* v. *Allegheny County*, *supra*, 183. Turning to the contract, we find in it no characteristics which differentiate it from the normal executory contract for the sale of land with partial payments. Normally, contracts between the United States and others are construed as contracts between private parties. *Lynch* v. *United States*, 292 U. S. 571, 579. This Court has been of the opinion that contracts for the sale of land transfer to the purchaser the equity in the land. We think this contract did so. That equity is realty. It was owned by the vendee. The United States retains only a legal title as security. In substance it is in the position of a mortgagee.[12] Minnesota has the same rule. *In re Petition of S. R. A., Inc.*, 219 Minn. 493, 507; 213 Minn. 487, 495, 499. Therefore when petitioner entered into possession of this real estate under its contract of purchase, the taxed property by the transfer became subject to the territorial jurisdiction of Minnesota.[13]

Territorial jurisdiction in Minnesota does not dispose of this tax problem. The nub of this case, that is the immunity from state taxation of property to which the United States holds legal title, remains. Minnesota took care to leave unassessed whatever interest the United States holds. The levy and judgment was "subject to fee title remaining in the United States of America." 219 Minn. at 496. Although Minnesota real estate taxes are assessed

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from sale. When they cease to be thus used, the jurisdiction reverts to the State."

The reference to federal control of "reserved" land probably relates to the supremacy of the United States for the management of governmental affairs in the absence of exclusive legislative power. See page 539.

[12] Lenman *v.* Jones, 222 U. S. 51; Gunton *v.* Carroll, 101 U. S. 426, 430-31; Bissell *v.* Heyward, 96 U. S. 580; Secombe *v.* Steele, 20 How. 90, 103-104. Compare 8 Thompson, Real Property, Sec. 4579; 2 Sugden, Venders (14th Ed.), 375. See Lowery *v.* Peterson, 75 Ala. 109. Compare Restatement, Conflict of Laws § 209.

[13] We intimate no view as to the legislative status of this property, if it is repossessed by the United States. See the cases cited in note 10, *supra*.

on the parcel of land as a "unitary item" including "all rights and privileges," the state does not claim that a tax sale will divest the fee title of the United States. 213 Minn. at 493, 499. Apparently the state is of the view that the equitable interest alone may be sold under its laws, leaving the fee of the United States in its position of priority over any interests which may be transferred by the tax sale. 219 Minn. at 513. Such a construction of the state law is binding upon this Court. It does not impinge upon federal rights. So long as that situation exists, the determination of the state cannot be challenged here. The possibility of repossession by the United States is not enough to block a tax sale in which the paramount rights of the United States are protected. *Baltimore Shipbuilding Co.* v. *Baltimore*, 195 U. S. 375, 381-82; *New Brunswick* v. *United States*, 276 U. S. 547, 556; *United States* v. *Alabama*, 313 U. S. 274, 282.[14]

Petitioner's argument goes beyond the question of the enforcement of the assessed tax. It is bottomed on the implied constitutional immunity from state taxation of property for which the United States holds title subject to unfulfilled conditions. In *Van Brocklin* v. *Tennessee*, 117 U. S. 151, that state sought to tax realty of the United States which was not held for the purposes or under the authority of the Cession Clause. Certain lots had been purchased by and conveyed to the United States pursuant to a federal tax sale. 12 Stat. 423, § 7. These lots were later transferred by deed or certificate of release to private owners. 17 Stat. 330; 18 Stat. 313. Tennessee assessed its own taxes upon the entire property for the years during which title to the lots was in the United States and attempted to collect them from the private owners after the transfer. Tennessee's claim was founded on the absence of state cession. This Court refused to permit the state's action, saying at page 179:

> "While the United States owned the land struck off to them for the amount of the taxes because no one would pay more for it, and until it was sold by the United States for a greater price, or was redeemed by the former owner, the United States held the entire title as security for the payment of the taxes;

[14] As the case was tried below on the theory of direct or implied immunity because the fee was in the United States, we neither consider nor decide the effect of a tax sale of petitioner's rights on its contract with the United States. See Wilson *v.* Cook, No. 328, 1945 Term, p. 5, slip opinion. Compare 11 U. S. C. § 15 with Freedman's Saving Co. *v.* Shepherd, 127 U. S. 494.

and it could not be known how much, if anything, beyond the amount of the taxes the land was worth. To allow land, lawfully held by the United States as security for the payment of taxes assessed by and due to them, to be assessed and sold for State taxes, would tend to create a conflict between the officers of the two governments, to deprive the United States of a title lawfully acquired under express acts of Congress, and to defeat the exercise of the constitutional power to lay and collect taxes, to pay the debts and provide for the common defence and general welfare of the United States."

The posture of the land sought to be taxed in the *Van Brocklin* case differentiates it from that presently under consideration. The United States there held complete title upon the assessment dates as a purchaser at a tax sale. The entire bundle of rights in the property was assessed by Tennessee. As a matter of grace, the United States had granted a right to the taxpayer to redeem. It was like an option to purchase. The statute might have authorized the sale of the land to any purchaser without consideration for the former owner. The United States, here, as we have demonstrated above had transferred at the time of the assessment equitable ownership to the purchaser and has only a legal title as security for the unpaid purchase price. See *United States* v. *Allegheny County*, 322 U. S. 174, 188.

Petitioner presses various land grant cases upon us as announcing the controlling rule.[15] The principle which petitioner extracts from these cases is that alienation of United States property does not pass an interest to the vendee taxable by a state until all conditions precedent for the delivery of the deed have been complied with. In the present case, petitioner asserts, the full amount of the purchase price must be paid before the state can tax. Such a rule can be extracted by the literal reading of certain phrases in the land grant cases.[16] The reason for the rule was said, in the earlier cases, to be that a state tax sale would defeat the government lien for surveying or other costs because the state sale would

[15] Railway Co. *v.* Prescott, 16 Wall. 603; Railway Co. *v.* McShane, 22 Wall. 444; Northern Pacific R. R. Co. *v.* Traill County, 115 U. S. 606; Irwin *v.* Wright, 258 U. S. 219.

[16] Irwin *v.* Wright, *supra*, 228, 229, 232, 233; Northern Pacific R. R. Co. *v.* Traill County, *supra*, at 609; Railway Co. *v.* McShane, *supra*, at 462.

[17] 16 Wall. at 608; 22 Wall. at 462; 115 U. S. at 610. See also Colorado Co. *v.* Commissioners, 95 U. S. 259. In the *McShane* case, itself, which clearly set out the above reason for non-taxability, it was recognized that the federal right of pre-emption for the benefit of settlers would not be affected by a

pass a title free from lien of the United States.[17] As heretofore shown, page 5 supra, this ground for refusing power to Minnesota to tax is not present in this case, since Minnesota holds that the lien of the United States will remain paramount.

Irwin v. *Wright* involved the taxability by a state of property occupied by an entryman under the Reclamation and Homestead Acts who had not received his required final certificate of land clearance, pages 227, 228, 232. The reason for the rule against state taxation until the equitable title passes from the United States to the entryman was there placed upon the policy of the Government to require those who sought government land to perform the required conditions of residence or improvement before beneficial title, subject to state taxation, passes from the United States to the locator. This transfer was said not to take place until the certificate was issued. Page 232. The prohibition of state taxation until the certificate was issued was one of the means by which the Government furthered its public policy of land settlement. After compliance with the condition and before patent, the state could tax.[18]

We think the public policy of national development and federal tax collection justify the limitation on state taxing power announced by the foregoing decisions. We do not, however, conclude that their rationale leads to an exemption from state taxation of all lands in which the United States holds legal title as security for the purchase price. To say that the payment of the purchase price is a necessary condition precedent to the loss of federal immunity is to make the rule too mechanical. It should be sufficiently flexible to subject real private rights, disentangled from federal policies, to state taxation. This has been the holding in mining claims.[19] Where beneficial interest has passed to a vendee, the retention of legal title does not give a significant difference from the situation of a deed with a lien retained or a mortgage back to secure the purchase money.

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state tax sale. This Court therefore reversed its former judgment in the *Prescott* case that land held by the railroads subject to this pre-emption could not be taxed by a state. 22 Wall. at 461. Congress promptly terminated the land tax exemption after the Traill County decision by subjecting railroad land grants to state taxation before payment of conveyancing costs. 43 U. S. C. § 882.

[18] Bothwell *v.* Bingham County, 237 U. S. 642, 647.

[19] Elder *v.* Wood, 208 U. S. 226.

That was the interpretation given the facts in *New Brunswick* v. *United States*, 276 U. S. 547.[20] The City of New Brunswick under authority of New Jersey sought to tax lots in the possession of purchasers from the Housing Corporation, a corporation wholly owned by the United States and therefore treated as the United States. These purchasers had paid enough of the purchase price—ten per cent—to entitle them to deeds under their contracts but had not paid the entire purchase price. The deeds had not been delivered nor the mortgages executed for the balance as required by the purchase agreement. This Court said: "In equity the situation was then the same as if the Corporation had conveyed title to the purchasers, as owners, and they had mortgaged the lots to the Corporation to secure the unpaid purchase money." Page 555. The Court sustained the tax subject to the paramount lien of the United States. We think the petitioner's Minnesota property is in a similar position. Ownership of the beneficial interest has passed to the petitioner with legal title retained by the United States for security purposes. This should not put this private property in an exempt class.

There is a suggestion that to hold United States property subject to state taxation pending the completion of payment will injuriously affect its salability and therefore interfere with the Government's handling of its affairs. Our recent cases have disposed of this economic argument in a way which is contrary to petitioner's contention. *Alabama* v. *King & Boozer*, 314 U. S. 1, and cases cited.

The only other contention of petitioner which we need mention is that the state has included the interest of the United States in the valuation of the land, and has therefore subjected that interest to taxation. But no deduction need be made for the interest of the Government since that interest is for security purposes only and is not beneficial in nature. The whole equitable ownership is in the petitioner and the value of that ownership may be ascertained on the basis of the full value of the land. *New Brunswick v. United States*, *supra*, at 555-56.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

[20] But see ABR Corp. v. Newark, 133 N. J. L. 34.

Mr. Chief Justice STONE, with whom Mr. Justice FRANKFURTER joins, concurring.

I concur in the result, but I do not join in so much of the opinion of the Court as undertakes to discuss the territorial jurisdiction of the State of Minnesota over the land in question. The territorial jurisdiction of the state to lay the tax, said to be a novel question, was not raised in the state courts, by the petition for certiorari, or in argument or briefs in this Court. Under our decisions we are therefore not free to decide it. *McGoldrick* v. *Compagnie Generale*, 309 U. S. 430, 434-5; *Wilson* v. *Cook*, No. 328, 1945 Term, slip opinion p. 6, and cases cited; see also Rule 38, par. 2 of the Rules of this Court; *Flournoy* v. *Wiener*, 321 U. S. 253, 259. Since the opinion of the Court expresses no disapproval of these authorities, I take it that everything said on the question of Minnesota's territorial jurisdiction to tax is dictum. Our opinion should be confined to the single question which the petitioner presents for our decision, whether the retention by the United States of the legal title to the taxed land precludes its taxation to petitioner, which, under its contract with the Government, has acquired possession and right to possession. As I have no doubt on this question, I agree the judgments should be affirmed.

Mr. Justice FRANKFURTER concurring.

The Government sold a piece of surplus property located in St. Paul, Minnesota. It put the vendee in possession but retained the legal title, with the right of re-entry, as security for portions of the purchase price remaining due under the contract of sale. The decisive question before us is whether the interest thus retained by the United States bars Minnesota, under a general non-discriminatory law, from taxing the vendee's interest in the property. The Constitution itself furnishes no answer in terms. But the considerations governing the appropriate adjustment between national and state powers of taxation, where the incidence of taxation may affect the property or functions of one another, do not require that entire immunity from state taxation be afforded this piece of property because of the interest which the United States retained to secure the unpaid purchase price.

Since the Government's security is left untouched by Minnesota, what remains of the Government's relation to the property is too attenuated to withdraw it entirely from Minnesota's taxing power.

The matter would hardly be open to question but for a series of cases arising under land grant legislation. As the opinion of the Court persuasively shows, these decisions rest upon considerations of policy not relevant to the immediate situation.

I agree with the Chief Justice that our disposition of this case should be confined to the only question raised by the record, that of the State's power to tax, unembarrassed by any issue as to territorial jurisdiction. The Chief Justice gives conclusive ground for such abstention. Moreover, even as to property indisputably owned by the Government, there may be "uncertainty and confusion" whether jurisdiction belongs to the federal government or to a State. See *Bowen* v. *Johnston*, 306 U. S. 19, 27; and *Pacific Coast Dairy* v. *Dep't*, 318 U. S. 285, 299. Taxability and territorial jurisdiction are not correlative. We ought not to borrow trouble.